

DOCKET NO. UWY CV-20-6054309-S

CONNECTICUT CRIMINAL
DEFENSE LAWYERS
ASSOCIATION, et al,
Plaintiffs,

v.

LAMONT, NED, *et al*,
Defendants,

SUPERIOR COURT

JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

APRIL 6, 2020

DECLARATION OF GAVIN GALLIGAN

I, Gavin Galligan, being duly sworn, declare under penalty of perjury, pursuant to Conn. Gen. Stat. §1-24a, §53a-157b, and 28 U.S.C. §1746 and state:

1. I am over 18 years of age and understand the obligation of an oath.
2. I am employed by the State of Connecticut, Department of Correction (DOC) in the position of Director of the Community Release Unit (CRU).
3. I have held this position since October 1st of 2019. Prior to my appointment to this position, Thomas Hunt served as the Director of the CRU, and I worked in the CRU as a Correctional Counselor Supervisor. My duties included, in part, reviewing individuals incarcerated in DOC who might be eligible for some form of community release under the release discretion of the DOC. I have personal knowledge of the matters stated herein.
4. I have been employed by the DOC since August of 2001. Prior to my appointment as Director of the CRU, I served in various positions within the DOC. During my 18 years of service, I have worked in the positions of: Correctional Officer, Correctional Counselor Trainee, Correctional Counselor and Correctional Counselor Supervisor. In these positions I have gained expertise in classification and risk assessment of inmates.

5. Community Release provides eligible inmates an opportunity to reintegrate into the community prior to the completion of their sentence. Community Release is discretionary release granted or denied by the designee of the Commissioner of Correction.
6. At this point in time, it would be unreasonably dangerous to the community and the public, and irresponsible to release at one time large numbers of inmates, as the social support networks in the communities in the cities and towns to which these offenders would be released has been dramatically impacted by the COVID-19 public health emergency. At this point in time the DOC is making extreme efforts to avoid shelter placements for inmates discharging end-of-sentence (“EOS”), as well as for inmates considered for discretionary release prior to EOS. This number is typically 40-50 inmates per month claiming homelessness. A copy of the DOC’s COVID-19 Response for Individuals Discharging to Homelessness is attached hereto as **Exhibit A**.
7. Keeping this Response, as set forth in Exhibit A in mind, a dramatic increase in releases would make this process not only much more difficult, but also would inevitably increase the health risk to the public by releasing individuals prematurely, without adequate risk assessments, health reviews, referrals and transition plans developed by DOC discharge planners. The plaintiffs’ proposal to release large numbers of offenders at once would also negatively impact community hospitals, walk-in clinics, and other medical facilities and would complicate the ability of those medical facilities, cities and towns that are already struggling to identify and plan for additional bed space, which is beyond the present capacity of these facilities.
8. Under DOC’s current practice, we are not approving discretionary release for anyone that does not have a solid home plan. Plaintiff’s proposal would negatively impact the DOC’s thoughtful, coordinated, and balanced approach to community releases, and would disregard

the lack of a safety net available for most offenders when they are released from incarceration. See **Exhibit B**, THE CT REENTRY COLLABORATIVE; COVID-19 & REENTRY IN CONNECTICUT.(posted at <https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/COVID19-Reentry-Factsheet-English-031920.pdf?la=en>)

9. There are several different avenues for offenders incarcerated in Connecticut to be released from prison prior to the end of their sentence. Community Release through the CRU is one of those avenues.
10. Community Release includes transitional supervision, residential program placement, transitional placement, nursing home release, DUI home confinement, re-entry furlough and in some cases dual supervision for cases that are serving Special Parole.
11. An offender, if eligible, may be released to a variety of different locations after being approved for community release through the CRU. For example, an inmate reviewed for community release could be released to a halfway house, to community supervision with a sponsor such as a family member in the community, a sober house or even to a medical facility.
12. Alternatively, inmates may, if eligible, also be released prior to their end of sentence to either a halfway house or community supervision by virtue of the parole system under the Board of Pardons and Paroles (BOPP). BOPP review includes but may not be limited to such things as discretionary parole, special parole and compassionate parole.
13. The CRU is not involved in the BOPP parole process. CRU is managed by the DOC, not the BOPP.

14. Parole through the BOPP and community release processes through the CRU are independent mechanisms of release. The Board of Parole is a separate state agency, with different statutory release mechanisms.
15. Parole eligibility and eligibility for community release are entirely independent.¹
16. As a result, an offender may, in some cases, be reviewed for both discretionary parole by the BOPP and community release through CRU. Depending upon the offender's eligibility for parole and/or community release, the offender may be reviewed first for parole, then for community release, or vice versa.
17. A denial for community release by the CRU does not prevent an offender from discretionary parole eligibility. To my knowledge, a denial for community release does not preclude a grant of discretionary parole.
18. Conversely, a denial of discretionary parole does not preclude approval for community release through the CRU. They are independent processes, both of which allow an offender to be released to the community through different State Statutes and release mechanisms, managed by two different agencies- DOC and BOPP.
19. The CRU and Parole and Community Services (PCS) Division and the BOPP are working collaboratively to review appropriate release eligible offenders that have a solid home plan. Community release decisions include a risk assessment process which evaluates the risk of the offender to the public and for recidivism. We have added a process to prioritize those that are considered high risk if exposed to COVID-19 following the Centers for Disease Control and Prevention (CDC) guidelines. For example, DOC is identifying all inmates who

¹ All references to "community release" hereinafter refer to community release through the DOC's Community Release Unit, and do not include parole.

might possibly be candidates for medical and/or compassionate parole, obtaining necessary medical records, information and is referring those cases to the BOPP.

20. In keeping with our commitment to provide previously incarcerated people returning to their communities with the very best chance for success, the DOC Reentry Unit is collaborating with the Hartford Reentry Center, CT Coalition to End Homelessness, and our other community partners to find alternative ways to connect people to reentry services and housing supports. DOC has also partnered with the Institute for Municipal and Regional Policy (IMRP) and the CT Reentry Collaborative to quickly create a fact sheet for all releasing offenders with information about changes to resource information that were likely triggered by COVID-19 and where to find assistance. Exhibit B.
21. On March 30, 2015 the total inmate facility count for the DOC was 16,157. This was the date in which DOC opened its then newly formed CRU, with the goal of having one decision maker for discretionary release applications under the authority of the Commissioner.
22. Historically discretionary release decisions had been made by each facility Warden, and at the time of opening CRU, there were 15 different decision makers.
23. The goal of CRU was not only to have consistent release decisions being made, but also to coordinate and track the cases across all facilities to ensure that cases eligible for release consideration were being reviewed in a timely manner. Efficiencies were maximized for the review processes and timeliness of release decisions were vastly improved.
24. Fast forward to 2020, the CRU has conducted over 46,000 case reviews in just over a five year time period. During the same time period, other initiatives were taking place pertaining to criminal justice reforms have contributed to a lower overall DOC count, as

covered in OPM reports. See <https://portal.ct.gov/OPM/CJ-About/CJ-SAC/SAC-Sites/Monthly-Indicators/Monthly-Indicators-2019>

25. As recently as one year ago, on April 3, 2019, there were a total of 13,249 offenders in DOC facilities.
26. As of January 1, 2020, there were 12,284 individuals in DOC custody, a reduction of 965 inmates in DOC facilities in nine months.
27. As of April 3, 2020, there are presently 11,736 inmates in DOC facilities, a reduction of 548 inmates in the last three months. This is a reduction of the inmate population of nearly 5% in just three months, in part, due to the redoubled efforts described below.
28. Recently, based upon the COVID-19 crisis, CRU has been continuing to ensure that all eligible offenders are being reviewed for discretionary release within current DOC policies and under the Commissioner's statutory authority.
29. The CRU has given direction to the correctional facilities to review all cases for accuracy to increase and include those who may be eligible, but had not currently been reviewed based upon restrictive status, disciplinary issues or even temporality ineligible for review.
30. We also requested that the facilities review all cases that were previously stipulated to complete programming, to see if the programming was completed or where the offender was in the process of the program participation. Staff within CRU also reviewed all of these cases.
31. Under direction of the Director of Programs and Treatment, CRU also looked at cases we stipulated prior for programming, to see if the offender had completed other programming, that could be substituted for the original program stipulation or even waived the program completion requirement for the purpose of release.

32. CRU directed the facilities to meet with all offenders who were approved for Transitional Supervision, but had no sponsor/residence, to see if they now were able to obtain a sponsor. Additional phone calls were allowed and approximately 20% of the cases that previously did not have a sponsor, were able to provide a sponsor/residence.
33. CRU worked with the facilities and Parole and Community Services to review cases that were “past due” or past their approved release date. These dates are “on or after dates,” as they are discretionary releases. For the most part, the “on or after date” which is given is the earliest date an individual could be released, pending a second review of the release plan, which is a required second step in the discretionary process, a second discretionary review to determine if the offender has a sponsor, and an approved, solid home plan. Some of these past due cases had sponsor issues in which information needed to be clarified, review of cases to obtain medical transfer summaries that would then allow the case to move forward with placement in a halfway house, or simple requests to update classification information were also attempted to be resolved in order to process releases. These case reviews continue on a daily basis.
34. On April 2, 2020, Commissioner Cook approved, signed off and authorized a revision to AD 9.8 Furloughs, (copy attached **Exhibit C**), which authorized the use of furloughs for offenders approved for Transitional Supervision based upon the Governor’s declaration of a State of Emergency. This will allow the release of some offenders up to 45 days prior to their Transitional Supervision release date (attached, Exh. C).
35. CT DOC Health Services has been working to identify offenders that may be at risk if they were to contract COVID-19, based upon age 50 or older and medical scores of 3 or greater. These case they were looking for comorbidities, the presence of two or more

chronic diseases or conditions. DOC Health Services is working to get opinion letters, signed by physicians or other Primary Care Providers (PCPs) sent to the BOPP for consideration for Compassionate Parole. The BOPP has stated that they would be willing to look at any cases that DOC sent over.

36. To the best of my knowledge none of the four individual inmate plaintiffs meet any such criteria for medical or compassionate parole.
37. The current process for discretionary community release through the CRU is as follows: once an offender has been identified by facility classification staff (typically a counselor) as eligible for community release, facility staff assemble materials required for the offender to be reviewed, and submit the offender's application electronically to CRU.
38. The materials included or reviewed in the offender's application for community release include such things as: Criminal record check (rap sheet), Police report or Pre-Sentence Investigation (PSI), agreement of community release conditions, notice of application to DOC and Judicial Victim Services, proposed sponsor contact information and criminal record check, program evaluation (s) (when available or required), DOC programming electronic records, check of protective order registry, review of institutional behavior, review of performance while on community release, parole or probation, victim impact statement(s), letters of support, letters of opposition, verification of eligibility of release, review of sentencing mitts, if the offender has community support- such as employment upon release and/or recommendations from the facility (if provided).
39. Different programs under the umbrella of community release have different eligibility requirements. For example, sentences of two years or less may be eligible for Transitional Supervision, sentences greater than two years may be eligible for Community Release-

Halfway House. Sentences specific to convictions under Conn. Gen. Stat. §§ 14-227a, 14-215, 21a-267, 21a-279c may be eligible for release to DUI Home Confinement.

40. Some of the eligibility requirements are set forth in DOC A.D. 9.2, attached hereto as **Exhibit D.**
41. Once an offender's application is submitted, CRU reviews the application and the director makes a decision on community release for that offender.
42. When reviewing an application for community release, the following factors are taken into consideration: the nature of the instant offense, the offender's criminal history, statements regarding the impact of release to the victim or the victim's family, compliance with the offender accountability plan (OAP), program participation and/or program removal, institutional behavior and/or disciplinary infractions (DRs), history while on supervision of any kind, out of state or federal criminal history (if any), and successes or failures while on supervision.
43. In these present days and times in light of the COVID-19 health emergency and stay-at-home orders, particular concern and attention is being paid to victims, and domestic violence cases, as the requirement for many individuals to remain inside under stay-at-home orders may very well increase the risks to victims for domestic violence.
44. Each offender eligible for review is afforded an individual review before a discretionary decision on the community release application is rendered.
45. An offender who is initially reviewed for community release may be approved, denied, waived, continue and reapply, or closed interest. For cases that are approved, the offender may face additional action on their case and not all case approved end up being released to supervision. New charges, disciplinary action, if they are no longer interested or if they do

not have an adequate time for placement or supervision are all factors that may lead to these additional actions taking place. These actions, recorded and notified to the offender, would include the case being: rescinded, offset, waived, close interest.

46. Waived indicates the offender has chosen not to be reviewed for community release, or have refused to participate in the review process.
47. Offset approved indicates that the case remains approved but the date of earliest release has been modified. The date may be set prior to the original date, or after the original review date. It could have been based upon a program being completed earlier than first anticipated, a modification of a sentence or change in jail credit- thus changing eligibility, disciplinary action that resulted in a request to change the earliest release date- could be based upon loss of risk reduction earned credit (RREC) also resulting in change of eligibility.
48. Closed interest are cases which an offender is too short for supervision and/or placement in a halfway house in the community. They may also be cases in which an offender would be required to complete programming prior to release, but they do not have adequate time to complete the mandatory programming and then have time for supervision. These cases are being reviewed to determine if these requirements can be waived or if the offender is eligible for a furlough. As stated above, redoubled efforts are being made to review all individuals eligible for release with a solid home plan.
49. A decision to deny a community release application is final and may not be appealed. If an offender is denied, the offender is generally not reviewed again for community release during their current sentence of incarceration. There may be instances where offenders denied may be eligible for a re-entry furlough, if eligible. There are also cases that may be

denied, but the offender may be in a situation where they have declined medically, and after evaluation and approval, they may be approved for release to a nursing home under the Commissioner's release authority. There also may be cases in which an offender was denied, but then began a new controlling sentence, in which the offender may be eligible for a re-review based upon that new sentence being controlling.

50. Reasons for a denial of a community release application are: criminal history, inadequate institutional program participation, refusal to complete stipulated programming, deemed inappropriate for outpatient sex offender treatment, injury and/or impact to victim (or) victim's family, multi-state offender, nature and/or circumstances of the current offense, poor institutional adjustment, insufficient time for placement, poor performance on community release, parole, or probation.
51. After review, the CRU notifies correctional facility staff of the release decision. The Parole and Community Services Unit would receive all approved cases, to then process for release into the community.
52. The Parole and Community Services (PCS) Unit would then conduct a second discretionary review to determine if the offender has a valid release plan. Prior to the COVID-19 emergency, this usual practice involved home investigation by a DOC PCS parole officer to interview the sponsor, conduct a home visit and determine whether the residence is appropriate. To expedite the process, and to protect the health and safety of the parole officers, these sponsor interviews are now being conducted telephonically, which has greatly facilitated and expedited the approval process of the release plan.
53. With regard to the four individual inmates who are named as individual plaintiffs in this lawsuit, I have reviewed DOC records available to me and based on these records I can

provide the Court the following information with regard to inmate Breyette, Willie – inmate #371781, who is serving a total effective sentence of 15 years for Conspiracy to commit Robbery 1st degree. Breyette’s End of Sentence (EOS) date is September 18, 2026 (subject to change with Risk Reduction Earned Credit). His parole eligibility date is June 18, 2024, and his DOC Community Release eligibility date is March 19, 2025. (may be subject to change with Risk Reduction Earned Credit).

54. Per the DOC Classification Manual, Breyette has a medical score 2, (relatively low needs, on a score of 1 to 5 basis) which is defined as: “**M2 Assessment:** These inmates are not expected to require nursing care on a regular basis, they have some sub-acute or chronic disease that requires occasional nursing attention, but not on an urgent basis.”
55. Inmate Breyette’s instant offense information is based on a Transcript from plaintiff Breyette’s which indicates that the present offense was committed while Breyette was in the community on probation from a prior sentence, a Meriden file, sentenced to a charge of possession of narcotics with intent to sell back on February 3rd, 2010, in which Breyette received a sentence of six years suspended after two years and a three year of probation; subsequently, and he commenced probation January 23rd, 2012. See Transcript of the Plea in Dockets NNH CR-12-0269702-Tand N23N CR-09-02552932, before Judge Clifford (New Haven Super. Ct. March 25, 2015) (**Exhibit E**, at 8-9);(see also sentencing Tr. June 5, 2015, attached **Exh. E**)
56. The plea transcript, Exh. E. at 9-10, further states that the factual basis for the instant offense is as follows:

On or about June 27th, 2012 again in the City of Meriden, at the location of 271 East Main Street, known as the EZ Mart, police responded at that time to a complaint of a convenience store robbery in which a lone male entered the store demanding money.

At the time, the decedent victim Ibrahim Ghazal was present and working behind the counter. The individual approached, displayed a gun and asked for the money behind the counter. The victim at that time gave the money to the robber, in which turned the defendant -- the co-defendant, I should say, Mr. Resto the robber at the

time, shot him with a firearm and he was later pronounced dead. This entire incident was recorded on video surveillance at the store.

Shortly thereafter, after distributing the video surveillance to the police, the Meriden Police Department were given information that the shooter was known as a Frankie Resto and they also received information implicating this defendant, Willie Breyette, as the potential driver and a potential vehicle.

Police responded to Mr. Breyette's home and located the vehicle that matched the description of the surveillance vehicle and they impounded that vehicle at that time to conduct a search.

And they also interviewed Mr. Breyette about his involvement. Mr. Breyette indicated at the time he was the driver of the vehicle and that had driven Mr. Resto to that store. He also led police to a shirt that Mr. Resto had discarded during the robbery.

Several days after this incident, Mr. Resto was found in New York, was arrested for this crime and then confessed to the robbery as well as the murder; however, at the time he claimed that the gun went off accidentally. He also maintained, at the time of the arrest, as well as subsequently, that this defendant, Mr. Breyette, had no knowledge of the fact that he was going in to rob the store.

57. Plaintiff Breyette is not presently eligible for any parole or community release and will not become so eligible until his 85% parole eligibility date of June 18, 2024.
58. As to the second named individual inmate plaintiff, Daniel Rodriguez, inmate #371603, he is serving an 8 year sentence for Criminal attempt to commit Assault 1st, Robbery 1st, Assault 2nd, and Criminal Possession of gun. His EOS date is November 14, 2021, (may subject to change with Risk Reduction Earned Credit). Rodriguez has a parole eligibility date of February 11, 2021. His DOC Community Release eligibility date is May 15, 2020: (may be subject to change with Risk Reduction Earned Credit). However, Halfway House ("HWH") review, even if approved, is in the discretion of the CRU, and placement is generally not effectuated until 4-6 months prior to EOS, because HWH beds are an extremely limited resource and the same bed-use can be implemented for four offenders, for four months each, rather than have one offender occupy a HWH bed for the full 16 months remaining on a sentence. Therefore, best practice and utilization means offenders may be placed in halfway houses for the last 4-6 months of a sentence prior to EOS.

59. In addition, at present, at least for the week of March 30 to April 3, 2020, HWH placements have been suspended, at the request of the HWH private contractual providers to DOC, to allow for a short pause, to ensure the health and safety of the present HWH residents and staff is not endangered by an exposure to a person who may be contagious with the COVID-19 virus. This HWH temporary suspension has just been reevaluated, and it is appropriate to continue the temporary suspension for another week, April 6-10, 2020, to allow the HWH providers to identify proper additional space for quarantine measures and safe-distance measures to be implemented in the various HWH locations. This is based on evolving advice and recommendations from the CDC, DPH, and advice from the Chief Medical Officer of the DOC, Dr. Byron Kennedy, and other factors. This temporary suspension does not impact plaintiff Rodriguez, who is not within six months of EOS.
60. A review of plaintiff Rodriguez's instant criminal offense reveals that Daniel Rodriguez is convicted of a violent offense with a report history including information from the victim who stated that on April 24, 2014, the victim was shot at by a male named "Danny" and the victim knew it was Danny because Danny is the same person who had robbed and pistol whipped the victim a couple of nights prior, on April 22, 2014. Further, the police investigation that led to plaintiff Danny Rodriguez's arrest also determined that Daniel Rodriguez was a previously convicted felon as of 2/6/13, having been convicted of Larceny in the Second Degree, which should have barred him from possessing a firearm on April 24, 2014. Thus plaintiff's conduct on April 22 and 24, 2014, led to charges for Assault in the Second Degree with a Firearm in violation of CGS §53a-60a, Criminal Possession of a Pistol or Revolver in violation of C.G.S. §53a-217c, Criminal Use of a Firearm in violation of C.G.S. §53a-216, Criminal Attempt@ Robbery in the First Degree in violation of CGS

§53a- 49 @ §53a-134 and Carrying a Pistol or Revolver without a Permit in violation of CGS §29-35.

61. As to the plaintiff, Anthony Johnson, inmate #90062, he is serving an 8 year sentence for Robbery 2nd and Conspiracy to commit Robbery 2nd degree. Johnson's EOS date is December 9, 2021, (subject to change with Risk Reduction Earned Credit). Johnson's parole eligibility date is September 26, 2020, and he is presently pending an interview from a BOPP institutional parole officer. His DOC Community Release eligibility date is June 10, 2020, (subject to change with Risk Reduction Earned Credit).
62. Plaintiff Anthony Johnson has a lengthy criminal history stretching back to 1977, with numerous efforts to supervise Johnson in the community on parole and/or probation. Criminal history information in his record reveals, based on interviews with state and federal probation officers, that Johnson, while in the community had numerous revocations of probation and /or parole for numerous new arrests, numerous technical violations and absconding. Johnson violated "so many times" that on September 24, 2012, he was unsuccessfully terminated from his probation. Johnson has a lengthy criminal record that includes in excess of 20 prior convictions. Besides Connecticut, Johnson has convictions in New York and Maine, as well as has a prior federal conviction. Johnson was afforded the opportunity of community supervision in the past, but he has been mostly non-compliant.
63. At his sentencing, the State presented information that Johnson was admittedly very forthcoming in that when he is not locked up, and out in the community, he supports himself by the sale of narcotics. The State also argued that Johnson poses a significant concern in terms of safety to the community, given his criminal history that dates back to 1977 for very significant crimes and continues to engage in the same enterprise of

narcotics and robbery. Thus, the State argued that Johnson poses a significant risk to the safety of the public and urged that is an appropriate factor for the Court to consider in fashioning an appropriate sentence. The Court (*Noble, J.*) noted, before sentencing Johnson, that he had two separate arrests, one in Boston and one in Rockville, CT, two separate arrests for narcotics after Mr. Johnson had been released on bail in this file. See Transcript, Docket No. H12M-CR130245927S (Feb. 13, 2015) **Exhibit F**, at 16. Thus, Johnson was sentenced on each count to a period of eight years to serve, and on completion of his sentence of incarceration, the Court ordered that Johnson be transferred to the jurisdiction of the Board of Parole for a period of two years of special parole pursuant to General Statute Section 54-125e, concurrent, for a total effective sentence of eight years to serve with two years of special parole. Exhibit F at 18.

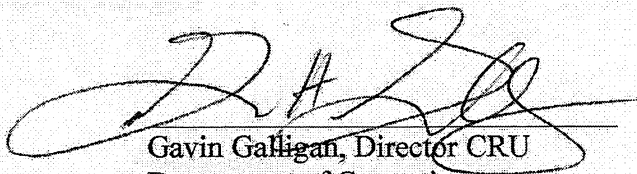
64. With regard to the fourth individual named as a plaintiff, Marvin Jones, inmate #297305, Jones is not solely being held in lieu of a \$5000 bond, for three drug charges, for offenses dated February 4, 2020, including a felony charge of possession of illegal narcotics with intent to sell in violation of CGS §21a-278(b) in docket no. N23N- CR-20-0226719-S. Marvin Jones committed these offenses while he was in the community on Special Parole, which is a violation of his Special Parole, so he is also being held on a Special Parole violator warrant issued by the BOPP.
65. Even if the bond of \$5000 were reduced to a Promise To Appear (PTA), plaintiff Jones would not be eligible for release because he is under the jurisdiction of the BOPP, who would have to hold a parole revocation hearing. The BOPP has the authority to issue a mittimus to require Jones to serve the balance of his Special Parole, in a correctional facility, which period of Special parole does not end until May 8, 2023. The BOPP has the

sole authority to order the release, and in their discretion, may reinstate Marvin Jones to Special Parole, once his criminal case is adjudicated, and his parole revocation proceeding by the BOPP is concluded.

66. Further review of the criminal history record of Marvin Jones reveals that in docket no. NNH-CR11-0118044-T, JD New Haven, on 12/19/2011 Marvin Jones was sentenced to 8 years execution suspended after 42 months, with 3 years' probation for sales of illegal drugs, and that on January 23, 2014, Jones was released to Community Release by the DOC, but on August 13, 2014, Jones was returned to confinement with new criminal charges, Sale of Narcotics and Sale of Narcotics within 1500ft of a School, in violation of Connecticut General Statutes, §21a-278(b) and §21a-278a(b).
67. On November 18, 2014, Jones was sentenced under Docket Number N23N-CR14-0150466-S on the charge of Possession WITS, in violation of CGS §21a-277(a) to 10 years, execution suspended after 2 years, 3 years' Probation.
68. Jones' probationary period began on 07/05/16 upon his discharge from the DOC and was not scheduled to end until 07/05/19. However, after Jones has completed approximately 84 days of his Probationary period, Jones' probation officer was compelled to seek a warrant for violation of probation as Jones had failed to comply with any of his conditions, failed to report for substance abuse treatment as required, and failed to keep his probation officer apprised of his residence and his whereabouts were unknown.
69. On June 8, 2017, Jones was readmitted to a DOC facility with another sentence of two years = 1 day (731 days) + 48 months Special Parole, for violation of probation and possession of narcotics WITS, in violation of CGS §21a-277(a). Jones was released to Special Parole on June 15, 2015, and returned to confinement as a Special Parole violator on February 5, 2020, with these new pending drug charges.

70. Upon further review of some of the statistics and data that is represented in plaintiffs' Motion for Temporary Order of Mandamus, the representations made by the plaintiffs are grossly inaccurate and incorrect. For example, on p. 9 of their motion, plaintiffs erroneously state that "Of the current sentenced DOC population, a substantial proportion—nearly one-third—is within 30 days of the end of their sentences." However, as of April 4, 2020, there are a total of 8,512 sentenced inmates held in DOC facilities, so plaintiffs' assertion would mean that approximately 2,837 inmates would be scheduled for release in the next month. The true and correct number is approximately 240 inmates scheduled to be released, less than ten times fewer than plaintiffs' assertion.
71. The CRU receives regular reports of the numbers on inmates scheduled to be released each month. There are an estimated 240 inmates scheduled to be released within 30 days, and another estimated 180 inmates in the following 30 days for a total of 420 inmates in the next 60 days. Each one of those inmates is reviewed, on an individualized case-by-case basis, to determine if they are eligible to be released prior to their EOS date, if in the discretion of the DOC there is acceptable risk to the community and there is an appropriate release plan.
72. The plaintiffs' proposal seeking a court order requiring DOC to identify a large classification of inmates that plaintiffs allege have "heightened CDC risk factors," would result in an unreasonably large number of offenders, and disregard risks to public safety, likelihood of remaining in the community without violating the law, and risks to the public health, safety and welfare of society. Further, such an approach, without regard to whether there is statutory authority to release such offenders, ignoring time remaining on their sentences would be wholly contrary to best correctional practices and would endanger the public.

Pursuant to Conn. Gen. Stat. §1-24a, §53a-157b, and 28 U.S.C. §1746, I declare under the pains and penalties of perjury that the foregoing statements are true and accurate to the best of my knowledge and belief.



Gavin Galligan, Director CRU
Department of Correction

Exhibit A

COVID-19 Response for Individuals Discharging to Homelessness

The Connecticut Department of Correction (DOC) has a legal obligation to discharge individuals who have served their sentence. For the approximately 30 individuals who have identified as homeless upon discharge, DOC has collaborated with DOH, CCEH, United Way, Hartford Reentry Center, Transitions Clinic, IMRP and the CT Reentry Collaborative to identify safe housing options that (1) reduce shelter placements and (2) reduce the risk of transmission of COVID-19 in congregate settings.

OPM has allocated \$150,000 in JAG funds that will be utilized to facilitate shelter diversion, rapid exit, rapid rehousing strategies, and provide housing assistance (security deposit, rent, hotel/motel, etc.). Summary of priority steps are as follows:

- Determine most appropriate sub-grantee for JAG funds based on current infrastructure to meet and support the housing needs of approximately 30 homeless individuals discharging within 30 days [OPM, DOC, DOH, CCEH];
- Facilitate early identification of incarcerated individuals reporting homeless upon discharge [DOC];
- Conduct pre-release phone screening and triage for homeless individuals returning to the Greater Hartford area [DOC, Hartford Reentry Center];
- Review current FUSE/CCR vacancies [CCEH];
- Assess housing capacity of CANs and re-housing providers that provide housing search navigation/case management, etc. [CCEH];
- Assist individuals in obtaining ID required for housing programs [DOC];
- Review logistics of removing the felony restriction for Section 8 housing with Senator Blumenthal and Senator Murphy [CCEH, CT Reentry Collaborative];
- Inquire about streamlining qualification process for Life Line cell phones [DOC, CT Reentry Collaborative];
- Review release mechanisms to determine if homeless individuals could be eligible for discretionary release to access housing services [DOC];
- Coordinate free health care, screenings, medications, medical and mental treatment for individuals releasing from DOC with Yale Medical School and networks of community providers [Transitions Clinic];
- Coordinate efforts with state work group that is compiling an inventory of state, private, and public facilities that could be used as housing/locations for quarantine [CCEH];
- Review suitability of empty state colleges/university dorm rooms as housing options for those discharging from incarceration (CCSU, etc.) [IMRP];
- Extend the timeframes for DOC to call 211 and conduct shelter placement phone screenings prior to discharge (as a last resort) [CCEH];
- Provide case management services to individuals who receive housing services [CT Reentry Collaborative, IMRP];
- Evaluate sustainability of housing supports given lack of employment opportunities [CCEH].

Exhibit B



THE CT REENTRY COLLABORATIVE

COVID-19 & REENTRY IN CONNECTICUT

The CT Reentry Collaborative is made up of 10 reentry roundtables across the state with each representing a collaboration of state and local organizations working together to foster successful reentry, eliminate barriers, reduce recidivism and increase public safety. With COVID-19 significantly impacting our state, nation and world, the Collaborative is here to assist you as much as possible while you transition to the community.

For updated information and to connect with a Reentry Collaborative member, reach out to us!

Phone: 203-699-6316

Email: ctreentry@ccsu.edu

Website(s): www.ctreentry.org OR <http://ctreentry.org/reentry-community-updates-covid-19>

IMPORTANT UPDATES FOR YOU

As of Wednesday, 3/18/20, the U.S. Treasury Department pitched the details of the President's \$1 trillion economic stimulus proposal to Congress, which would authorize two \$250 billion rounds of direct payments to individual taxpayers. If approved, the first payment would be issued beginning early April and another wave of payments would be distributed to taxpayers beginning mid-May.

CT Department of Social Services

DSS Field Offices are closed to the public from March 17 to March 27, 2020. DSS will continue to provide services during this time. You can access benefit and application information at any time/day by visiting www.connect.ct.gov and www.ct.gov/dss/apply; or by calling 1-855-6-CONNECT.

CT Department of Labor

DOL's phone system for filing weekly unemployment claims and performing an account status inquiry will no longer be available. You must file a claim or check your account status at: www.FileCTUI.com.

CT Department of Motor Vehicles

DMV branch offices are closed to the public for the transaction of business until further notice. DMV is providing services online, through the mail and by phone.

Public Transportation:

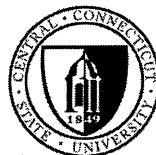
CT Transit Bus is requiring passengers to board from the rear door with the exception of passengers who are in wheelchairs and others who require the bus to kneel. The normal schedules are currently active.

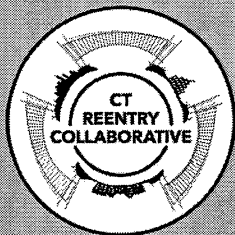
Metro-North is not currently accepting fare payments on trains or at ticket counters. The change is intended to reduce hand-to-hand contact to stop the spread of COVID-19. Only credit and debit card payments will be accepted for ticket transactions.

The CT Reentry Collaborative
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THE CT REENTRY COLLABORATIVE

COVID-19 & You

What is coronavirus disease 2019?

Coronavirus disease 2019 (COVID-19) is a respiratory illness that can spread from person to person. The virus that causes COVID-19 is a novel coronavirus that was first identified during an investigation into an outbreak in Wuhan, China.

Can I get COVID-19?

Yes. COVID-19 is spreading from person to person in parts of the world. Risk of infection from the virus that causes COVID-19 is higher for people who are close contacts of someone known to have COVID-19, for example healthcare workers, or household members. Other people at higher risk for infection are those who live in or have recently been in an area with ongoing spread of COVID-19.

Learn more about places with ongoing spread at <https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html#geographic>.

The current list of global locations with cases of COVID-19 is available on CDC's web page at <https://www.cdc.gov/coronavirus/2019-ncov/locations-confirmed-cases.html>.

How does COVID-19 spread?

The virus that causes COVID-19 probably emerged from an animal source but is now spreading from person to person. The virus is thought to spread mainly between people who are in close contact with one another (within about 6 feet) through respiratory droplets produced when an infected person coughs or sneezes. It also may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads. Learn what is known about the spread of newly emerged coronaviruses at <https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html>.

What are the symptoms of COVID-19?

- Fever
- Cough
- Shortness of breath

What are severe complications from this virus?

Some patients have pneumonia in both lungs, multi-organ failure and in some cases death.

People can help protect themselves from respiratory illness with everyday preventive actions.

- Avoid close contact with people who are sick.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Wash your hands often with soap and water for at least 20 seconds. Use an alcohol-based hand sanitizer that contains at least 60% alcohol if soap and water are not available.
- If you are sick, to keep from spreading respiratory illness to others, you should
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.

What should I do if I recently traveled from an area with ongoing spread of COVID-19?

If you have traveled from an affected area, there may be restrictions on your movements for up to 2 weeks. If you develop symptoms during that period (fever, cough, trouble breathing), seek medical advice. Call the office of your health care provider before you go and tell them about your travel and your symptoms. They will give you instructions on how to get care without exposing other people to your illness. While sick, avoid contact with people, don't go out and delay any travel to reduce the possibility of spreading illness to others.

Is there a vaccine?

There is currently no vaccine to protect against COVID-19. The best way to prevent infection is to take everyday preventive actions, like avoiding close contact with people who are sick and washing your hands often.

Is there a treatment?

There is no specific antiviral treatment for COVID-19.

People with COVID-19 can seek medical care to help relieve symptoms.



For more information: www.cdc.gov/COVID19

Exhibit C



**Request for Inclusion or Revision to an
Administrative Directive**
Connecticut Department of Correction

CN 1301
REV 06/29/18

Administrative Directive Number: 9.8

Title: Furloughs

☒ I recommend the following inclusion or revision to the above referenced Administrative Directive
(provide detailed explanation regarding reason for change):

As a response to COVID-19 the following language is recommended to be added to Administrative Directive 9.8 Furloughs. Specifically, the language shall be added under section 9 Reentry Furloughs to Voted-to-Parole Date.

Reentry Furloughs to Transitional Supervision. Inmates approved for Transitional Supervision may be granted furloughs for up to 45 days in advance of the inmates Transitional Supervision hold date and at the discretion of the Commissioner or designee. Furloughs may be granted in order to limit an inmate's exposure to COVID-19 and may be renewed at the discretion of the Commissioner or designee. This practice shall only be effective during the period of public health and civil preparedness emergency as declared by Governor Lamont on March 10, 2020.

☐ See attached documents

ORIGINATOR

Name: Gavin Galligan

Title: Director

Date: 4/1/20

Signature:

Facility/Unit: CRU

OFFICE OF STANDARDS AND POLICY REVIEW

Reviewed by:



Office of Standards and Policy Staff signature:

Date: 4/1/20

UNIT/DISTRICT/DIVISION RECOMMENDATIONS

Approved ☒ Denied ☐

Unit Administrator's signature:

Date: 4/1/20

District Administrator's signature:
(only needed if originating from facility)

Date:

Division Administrator's signature:

Date:

COMMISSIONER'S DECISION

This request is:

☒ **APPROVED**

☐ **DENIED**

Effective date of request:

☒ The language/provisions of this inclusion/revision shall be effective as of and subsequently added to the Administrative Directive at the next update:

Date: 4/2/2020



☐ This inclusion/revision shall be added to the Administrative Directive prior to:

Date:

☐ This inclusion/revision shall be added immediately to the Administrative Directive.

Commissioner's signature:

Date: 4/2/2020

 <p>State of Connecticut Department of Correction</p> <p>ADMINISTRATIVE DIRECTIVE</p>	<p>Directive Number 9.8</p>	<p>Effective Date 7/20/15</p>	<p>Page 1 of 8</p>
	<p>Supersedes Furloughs, dated 11/13/2012</p>		
<p>Approved By</p>  <p>Commissioner Scott Semple</p>	<p>Title Furloughs</p>		

1. Policy. The Department of Correction may provide furlough opportunities to eligible inmates consistent with public safety, rehabilitation and sound correctional practices.
2. Authority and Reference.
 - A. Connecticut General Statutes, Sections 14-215(c), 14-227(a), 18-81, 18-101a (as amended by Public Act 09-7, Section 35, September Special Session), 53a-169, 54-127 and 54-231.
 - B. Administrative Directives 4.5, Victim Services; 6.6, Reporting of Incidents; 7.5, Escapes; 9.5, Code of Penal Discipline; 9.6, Inmate Administrative Remedies; 10.5, Public Service Work; and 11.3, Remand of Offenders to Actual Custody.
 - C. American Correctional Association, Standards for the Administration of Correctional Agencies, Second Edition, April 1993, Standard 2-CO-4G-01.
 - D. American Correctional Association, Standards for Adult Correctional Institutions, Fourth Edition, January 2003, Standard 4-4443.
 - E. American Correctional Association, Performance-Based Standards for Adult Local Detention Facilities, Fourth Edition, June 2004, Standard 4-ALDF-5B-16.
3. Definitions and Acronyms. For the purposes stated herein, the following definitions and acronyms apply:
 - A. COLLECT. Connecticut Online Law Enforcement Communications Teleprocessing.
 - B. Deathbed/Funeral Furlough. The discretionary release of an inmate to visit a dying relative or to attend the funeral of a relative.
 - C. Furlough. The discretionary release of an inmate to community supervision for an authorized purpose as outlined in Section 4 of this Directive and permitted by Section 18-101a of the Connecticut General Statutes (as amended by Public Act 09-7, Section 35, September Special Session).
 - D. Medical Furlough. The discretionary release of an inmate to obtain medical services not otherwise available.
 - E. Reentry Furlough. The discretionary release of an inmate to an approved residence in the community for any compelling reason consistent with rehabilitation, prior to a planned discharge or release to discretionary parole supervision during which the inmate must report to a parole officer in lieu of returning to a correctional facility.
 - F. Relative. A member of the inmate's immediate family (i.e., legal spouse, parent, grandparent, child, grandchild, or sibling; to include a step/foster relationship).
 - G. Reintegration Furlough. The discretionary furlough of an inmate participating in a community reintegration program for any authorized purpose consistent with rehabilitation that supports the inmate's preparation for successful community reintegration upon discharge from the Department of Correction.

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4. Authorized Purposes for Furlough. The Commissioner of Correction or designee, may extend the limits of the place of confinement of an inmate as to whom there is reasonable belief he or she will honor his or her trust, by authorizing the inmate under prescribed conditions to visit a specifically designated place or places, within or without the state, for periods not exceeding 45 days and return to the same or another institution or facility. Such periods may be renewed at the discretion of the Commissioner or designee. Such furlough may be granted only to permit:

- A. a visit to a dying relative;
- B. the attendance at a funeral of a relative;
- C. the obtaining of medical services not otherwise available;
- D. the contacting of prospective employers; or,
- E. any compelling reason consistent with rehabilitation.

Any inmate who fails to return from furlough as provided in the furlough agreement shall be guilty of the crime of escape in the first degree in accordance with Section 13 of this Directive.

5. Duration and Frequency of Furlough.

- A. Deathbed/funeral furloughs may be authorized for up to 72 hours. Such furloughs may be extended by the Unit Administrator for up to an additional 72 hours for an unforeseen legitimate extraordinary reason not anticipated at the beginning of the furlough. Such extensions shall be reported in writing with justification to the appropriate District Administrator by the next business day. Furloughs for such inmates shall not be restricted by frequency but shall be limited to the time required for such programs. Furloughs shall not be required for inmates in community release (level 1).
- B. Medical furloughs may be authorized for up to 15 days and renewed as required.
- C. The frequency of furloughs for community release (level 1) inmates shall be at the discretion of the director of the community program. Duration shall be in accordance with Section 5(A) of this Directive.
- D. A reentry furlough may be authorized for up to 45 days prior to a scheduled discharge from incarceration or a parole date established by the Board of Pardons and Paroles. Upon approval of the furlough by the Unit Administrator, the Victim Services Unit shall be notified of the impending reentry furlough in accordance with Administrative Directive 4.5, Victim Services. Reentry furloughs shall be in compliance with Section 6 of this Directive.
- E. An inmate in a halfway house, inpatient program, or on work or educational release may be allowed to participate in community release programming and a furlough shall not be required for such participation.

6. Eligibility. The following criteria shall be used to determine furlough eligibility:

- A. The inmate shall be classified as an overall level 1, 2 or 3.
- B. Class A, B and C disciplinary reports, which are not deemed to impact staff or public safety, may be waived at the discretion of the Unit Administrator. An inmate found guilty of an intentional/direct assault on a Department of Correction employee, shall be ineligible for furlough consideration during the current incarceration unless waived by the appropriate District

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- Administrator. Deathbed/funeral and medical furloughs shall not be restricted by this criterion.
- C. The inmate shall have a verified reason for the furlough and an approved residence/destination, transportation and sponsor.
 - 1. Approved destinations for inmates participating in community reintegration programs may include but are not limited to; job interviews, employment, pre-employment or vocational training, schools and academic institutions, treatment programs, community service programs and religious services.
 - 2. Transportation to and from approved community reintegration destinations may be provided by the business, organization or community program that is sponsoring the inmate, but is subject to verification and approval.
 - D. The inmate shall have served a minimum of 30 days or forty percent (40%) of the estimated length of confinement, whichever is greater. Deathbed/funeral and medical furloughs shall not be restricted by this criterion. An inmate serving a sentence of 45 days or less must serve a minimum of 50% before participating in a reentry furlough. Inmates shall serve a minimum of 30 days in order to be eligible for a Reintegration Furlough.
 - E. An inmate's eligibility for furlough shall be based on the maximum release date or voted to parole date and shall not be based on parole eligibility.
 - F. With the exception of a medical furlough, an inmate shall not be eligible for a furlough during the mandatory portion of a sentence for Driving While Intoxicated (Section 14-227(a) of the Connecticut General Statutes) or driving under suspension offense that originally was related to Driving While Intoxicated (Section 14-215(c) of the Connecticut General Statutes). An inmate may be considered for a medical furlough under this subsection if authorized by the Commissioner.
 - G. With the exception of a medical furlough, a Level 5 inmate shall not be eligible for a furlough.
 - H. Inmates who are an overall Level 1, 2 or 3 and have been incarcerated for conviction of a level 4 offense shall not be eligible for a furlough until within 12 months of discharge or voted to parole date. Medical furloughs or Reintegration Furloughs shall not be restricted by this criterion.
 - I. Pretrial and sentenced inmates with cases pending for which bond has not been posted shall be ineligible for all furloughs except deathbed/funeral and medical furloughs. This includes all charges pending even if the other jurisdiction has indicated that they will not extradite the inmate, except that if official documentation from another state exists which informs the Department that the other jurisdiction will not extradite and the charge equates to a risk level 3 or lower offense; then the detainer score for this (these) charge(s) shall be removed.
 - J. There shall be no current parole violations for which a revocation hearing has not been held.
 - K. No inmate shall be entitled to participation in the furlough program. Discretion concerning the frequency, length of furlough and the conditions imposed on each furlough shall be consistent with this Directive and otherwise within the authority of the Unit Administrator. Approval for a furlough carries no implied consent for subsequent furloughs.

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7. Community-Based Eligibility. A level 1 inmate in a halfway house shall be eligible for consideration for furlough at the discretion of the Director of Parole and Community Services or designee, and shall not be subject to Section 6 of this Directive with the exception of Section 6(F), which shall apply.
8. Suitability Factors. The Unit Administrator or the Director of Parole and Community Services shall consider the following factors when reviewing an inmate for furlough participation:
 - A. Public safety.
 - B. Criminal history, to include: severity and patterns of violence; sexual offenses; escape; institutional behavior; significant history of domestic violence; and Security Risk Group affiliation.
 - C. Program need or benefit to include: substance abuse; mental health status; and prior program participation/failure.
 - D. Any record of victim concerns to include any active restraining orders or victim notifications.
 - E. Any prior performance on community supervision.
9. Reentry Furloughs to Voted-to-Parole Date. Reentry furloughs up to 45 days in advance of an inmate's voted-to-parole date may be authorized at the discretion of the Director of Parole and Community Services or designee(s) in order to provide inmates with an extended opportunity to participate in assessments and/or programs, for employment and educational opportunities, to secure a stable residence, and/or to make recommendations to the Board of Pardons and Paroles regarding parole conditions.

The procedures detailed in Section 6(A through C) of this Directive shall be waived for this purpose only. The remaining eligibility criteria, Section 6(D through K) shall apply. The procedures detailed in Section 10(A through C) of this Directive shall not apply and Parole and Community Services form PCS 4102, Sponsor Questionnaire and Verification shall replace form CN 9802, Furlough Sponsor Questionnaire/Agreement in this case (reentry furloughs to voted-to-parole date) and shall be completed by designated parole staff. All other sections including Section 10(D) of this Directive shall still apply.

The electronic release authorization sent by the Parole and Community Services Division to the facility housing the inmate with the language "approved for REF effective" with a specific date shall serve as notice to the facility of the approval of the reentry furlough. Upon receipt of the release authorization, the designated facility staff shall transcribe the additional conditions on the inmate's parole agreement onto form CN 9804, Reentry Furlough Agreement, and shall have the inmate sign the Reentry Furlough Agreement in accordance with Section 12(A) of this Directive and shall forward a copy to the supervising parole officer via facsimile machine or scanned as an e-mail attachment. The original CN 9804 shall be placed in the inmate's master file.

The following situations shall make an inmate ineligible for release to reentry furlough to parole supervision:

- A. Inmates being released directly to transfer parole;
- B. Inmates being released directly to special parole unless extenuating circumstances exist (e.g., the availability of residential placement);

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- C. Inmates whose parole has been rescinded and who have been re-paroled;
- D. Inmates whose parole has been revoked and who have been re-paroled;
- E. Inmates whose parole has been revoked and reinstated or rescinded and reinstated;
- F. Inmates for whom the voted-to-parole date has been off-set by the Board of Pardons and Paroles; and,
- G. Inmates whose parole conditions include the completion of a mandatory residential treatment program or inpatient program unless the inmate has satisfactorily satisfied this stipulation.

If, based on the factors detailed in Section 8 of this Directive, a parole manager has reason to believe that an inmate is NOT suitable for a reentry furlough to voted-to-parole date; the parole manager may conduct a case conference with the Deputy Director of Parole and Community Services or higher authority. Any denial of an inmate's release to a reentry furlough to voted-to-parole date must be authorized by the Deputy Director of Parole and Community Services or higher authority.

Inmates assigned to either the Special Management Unit or the Mental Health Unit may be released to reentry furlough at the discretion of the parole managers assigned to either of those units or higher authority.

10. Application and Decision.

- A. When considering an inmate for a furlough, the Unit Administrator or designee shall initiate form CN 9801, Furlough Application/Decision. The Unit Administrator or designee shall forward a copy of CN 9802, Furlough Sponsor Questionnaire/Agreement to the inmate's proposed sponsor which the sponsor shall complete and return. In the case of a reentry furlough, this process may be conducted telephonically using form CN 9802, Furlough Sponsor Questionnaire/Agreement. The Unit Administrator or designee shall verify that CN 9802, Furlough Sponsor Questionnaire/Agreement has been completed to include the:
 - 1. reason for the furlough;
 - 2. reliability of the transportation;
 - 3. identity and residence of sponsor;
 - 4. proposed furlough residence (which shall be with the sponsor); and,
 - 5. suitability of the sponsor. The sponsor shall:
 - a. not be a Department employee except an immediate family member as defined in Section 3(E) of this Directive;
 - b. not be a co-defendant;
 - c. not have an outstanding criminal sanction or criminal justice supervision except immediate family as defined in Section 3(E) of this Directive (in order to determine this, facility staff shall run COLLECT checks on sponsors for reentry, medial and regular furloughs);
 - d. be responsible and a positive influence;
 - e. sign CN 9802, Furlough Sponsor Questionnaire/Agreement and agree to notify facility of any violations; and,
 - f. not be the inmate's victim, unless approved by the appropriate District Administrator.

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- B. Upon authorization from the Commissioner, the Unit Administrator may approve all initial furloughs through the use of CN 9803, Furlough Agreement and CN 9804, Reentry Furlough Agreement or CN 9805 Reintegration Furlough Passbook, as appropriate.
- C. The Unit Administrator or designee may deny a furlough request. The reason for denial shall be stated in writing and delivered to the inmate via page 2 of form CN 9801, Furlough Application/Decision. The denial shall be documented on form CN 9202, Inmate Classification History Log in Section 5 of the inmate's master file. An inmate may appeal the decision to deny a furlough in accordance with Administrative Directive 9.6, Inmate Administrative Remedies.
- D. An inmate serving a sentence for a sex-related offense or having a history of sex-related offenses other than prostitution may be approved by the Commissioner or designee for furlough participation or by the Director of Parole and Community Services for reentry furloughs to voted-to-parole or special parole dates.

11. Community Notification.

- A. Law Enforcement Agency Notification. Local and state law enforcement authorities shall be notified of any inmate approved for a reentry furlough placement. Such notification shall be made by parole staff by completing a release authorization and a file 17 (FL-17).
- B. Judicial Office of Victim Services. In accordance with Section 54-231 of the Connecticut General Statutes and Administrative Directive 4.5, Victim Services, the Department shall notify the Judicial Office of Victim Services when an inmate is granted a furlough that allows the inmate to reintegrate into the community immediately preceding discharge or release to parole. Notification and documentation shall be through an automated process in accordance with Administrative Directive 4.5, Victim Services.
- C. Victim Notification. Victim notification shall be made in accordance with Administrative Directive 4.5, Victim Services.

12. Program Requirements.

- A. Furlough Agreement. An inmate approved for a furlough, other than a reentry furlough, shall agree by signature to the furlough conditions as enumerated on form CN 9803, Furlough Agreement. CN 9803, Furlough Agreement shall be issued to the inmate prior to leaving the facility.
 - 1. An inmate approved for a furlough other than a Reintegration Furlough shall carry CN 9803, Furlough Agreement at all times while on furlough status.
 - 2. An inmate approved for a Reintegration Furlough shall carry CN 9805, Reintegration Furlough Passbook at all times while on furlough status.
- B. Reentry Furlough Agreement. An inmate approved for a reentry furlough shall agree by signature to the furlough conditions as enumerated on form CN 9804, Reentry Furlough Agreement. CN 9804, Reentry Furlough Agreement shall be issued to the inmate prior to leaving the facility. An inmate approved for a reentry or reintegration furlough shall carry CN 9804, Reentry Furlough Agreement at all times while on furlough status.
- C. Out-of-State Furlough. An inmate approved for an out-of-state furlough shall waive extradition prior to each release on furlough.

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Notification shall be in accordance with Section 11(A) of this Directive.

- D. Compliance. An inmate approved for furlough shall comply with the conditions outlined on form CN 9803, Furlough Agreement or CN 9804, Reentry Furlough Agreement, as applicable. Failure to comply may result in disciplinary action, criminal prosecution, loss of furlough privilege and/or any other appropriate action.
13. Escape/Late Return from Furlough.
 - A. Furlough (Other Than a Reentry Furlough). Any furloughed inmate who fails to return from a furlough (other than a reentry furlough) pursuant to Section 53a-169 of the Connecticut General Statutes shall be declared an escapee and referred for criminal prosecution in accordance with Administrative Directive 7.5, Escapes. Any failure to return on time shall result in disciplinary action in accordance with Administrative Directive 9.5, Code of Penal Discipline.
 - B. Reentry Furlough. Any inmate on a reentry furlough who fails to report or notify his/her parole officer of a change of residence may be referred for criminal prosecution in accordance with Administrative Directive 7.5, Escapes.
 - C. Reintegration Furlough. Any inmate on a reintegration furlough who fails to return from a reintegration furlough pursuant to Section 53a-169 of the Connecticut General Statutes shall be declared an escapee and referred for criminal prosecution in accordance with Administrative Directive 7.5, Escapes. Any failure to return on time shall result in disciplinary action in accordance with Administrative Directive 9.5, Code of Penal Discipline.
 14. Remands from Furlough. The decision to remand an inmate from furlough shall be at the discretion of the Director of Parole and Community Services or designee in consultation with the Unit Administrator or the facility duty officer. The remand of inmates to custody shall be governed by Administrative Directive 11.3, Remand of Inmates to Actual Custody.
 15. Furlough Violations. Violations of furlough conditions shall be documented on CN 6601, Incident Report in accordance with Administrative Directive 6.6, Reporting of Incidents. CN 9503, Disciplinary Report shall be completed and issued to the inmate in accordance with Administrative Directive 9.5, Code of Penal Discipline. If the inmate is on a furlough other than a reentry furlough, the facility shall complete CN 9503, Disciplinary Report. If the inmate is on a reentry furlough, the parole officer shall complete CN 9503, Disciplinary Report. The Unit Administrator shall review the situation to determine if the inmate did violate any provision(s) of this Directive, and if transfer to a higher-level security facility is necessary. Additionally, a notation shall be made to form CN 9202, Inmate Classification History Log in Section 5 of the inmate's master file.
 16. Furlough Monitoring. All inmates on furlough shall be monitored for compliance with program requirements in accordance with the provisions enumerated on form CN 9803, Furlough Agreement or CN 9804, Reentry Furlough Agreement, as applicable.

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17. Reentry Furlough and Reintegration Furlough Supervision. Inmates granted reentry furlough or reintegration furlough shall be supervised by the Division of Parole and Community Services. The Director of Parole and Community Services shall develop, implement and update (as necessary) procedures for the supervision of inmates on reentry furlough and reintegration furlough.
18. Off-Grounds Work Details. Off grounds work details consistent with Administrative Directive 10.5, Public Service Work shall not be considered as furloughs.
19. Speaking Engagements/Escorted Functions. Unit Administrators shall be authorized to allow inmate participation in speaking engagements and other escorted functions as appropriate. Such engagements or functions shall be escorted by state, municipal or authorized contract personnel as appropriate.
20. Forms and Attachments. The following forms are applicable to this Administrative Directive and shall be utilized for the intended function.
 - A. CN 9801, Furlough Application/Decision;
 - B. CN 9802, Furlough Sponsor Questionnaire/Agreement;
 - C. CN 9803, Furlough Agreement; and,
 - D. CN 9804, Reentry Furlough Agreement;
 - E. CN 9805, Reintegration Furlough Passbook.
21. Exceptions. Any exceptions to the procedures in this Administrative Directive shall require prior written approval from the Commissioner.

Exhibit D

 <p>State of Connecticut Department of Correction</p> <p>ADMINISTRATIVE DIRECTIVE</p>	<p>Directive Number 9.2</p>	<p>Effective Date 7/1/2006</p>	<p>Page 1 of 14</p>
	<p>Supersedes Inmate Classification, dated 3/5/2003</p>		
<p>Approved By <i>Thomas C. Lantz</i></p>	<p>Title Offender Classification</p>		

1. Policy. Each inmate under the custody of the Commissioner of Correction shall be classified to the most appropriate assignment for security and treatment needs to promote effective population management and preparation for release from confinement and supervision. The Department's classification of inmates shall normally utilize a classification instrument based on objective factors. The classification system shall not foster discrimination in status, including housing, programming, job assignment, or on the basis of race, religion, creed, color, or national origin.

2. Authority and Reference.
 - A. Connecticut General Statutes, Sections 14-227(a), 14-215(c), 18-73, 18-81, 18-86, 18-100, 18-100c, 21a-277(d) and 21a-279(e).
 - B. American Correctional Association, Standards for Administration of Correctional Agencies, Second Edition, April 1993, Standards 2-CO-4B-01, 2-CO-4B-03 and 2-CO-4B-04.
 - C. American Correctional Association, Standards for Adult Correctional Institutions, Fourth Edition, January 2003; Standards 4-4286, 4-4295 through 4-4298 and 4-4300 through 4-4305.
 - D. American Correctional Association, Performance-Based Standards for Adult Local Detention Facilities, Fourth Edition, June 2004, Standards 4-ALDF-2A-30 through 4-ALDF-2A-32.
 - E. Administrative Directives, 6.4, Transportation and Community Supervision of Inmates; 6.6, Reporting of Incidents; 6.14, Security Risk Groups; 8.5, Mental Health Services, 9.4, Restrictive Status; 9.5, Code of Penal Discipline; and 9.8, Furloughs.

3. Definitions. For the purposes stated herein, the following definitions apply:
 - A. Classification. The ongoing process of collecting and evaluating information about each inmate to determine the inmate's risk and need level for appropriate confinement location, treatment, programs, and employment assignment whether in a facility or the community.
 - B. Commitment. The status of an inmate when legal custody is maintained by the Department of Correction. Custody may be in a correctional institution or the community.
 - C. Community Release Program. A correctional program based in the community for eligible inmates, which includes transitional supervision and residential program placement.
 - D. Newly Admitted Inmate. An accused, convicted or sentenced inmate who enters the Department of Correction under a new period of commitment. If an inmate has not left the custody of the Department prior to re-admittance, the inmate shall not be treated as newly admitted. For the purposes of this directive, an inmate admitted as a temporary surrender shall not be considered a newly admitted inmate.

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- E. Override. A documented condition of fact warranting an increase or decrease in the overall risk level of an inmate.
4. Classification Goals. The goals of the Department's classification system are to:
- A. ensure the safety and well being of the community, facility, staff and the inmate.
 - B. apply a consistent and reliable classification and assessment system that assigns inmates a level of confinement consistent with the protection of the community, staff, and inmates.
 - C. recommend inmate programs and activities according to specific needs.
 - D. involve the staff and the inmate in developing an incarceration plan and a plan for community release and reintegration, where appropriate.
 - E. develop, record and analyze data necessary for individual decision making and program and facility planning.
 - F. ensure that staff and inmates understand the procedures and criteria used in the classification process.
5. Classification Management. The Director of Offender Classification and Population Management shall be responsible for the Department of Correction's classification system. The Director of Offender Classification and Population Management shall develop a classification manual containing detailed information concerning offender classification procedures which shall be reviewed annually and updated as necessary. The Unit Administrator shall be responsible for administering the classification procedures under this Directive. However, nothing in this Directive shall preclude the Director of Offender Classification and Population Management, the Director of the Programs and Treatment Division, a Deputy Commissioner or the Commissioner from intervening in any classification decision at any time. The Director of Offender Classification and Population Management shall be responsible for an annual audit to determine compliance with the Department's classification directives and manual.
6. Classification Levels. Each inmate shall be classified according to risk and needs, and shall be assigned an overall risk score of one (1) to five (5). A risk score level 1 shall represent the lowest security level and 5 the highest. A needs score level 1 shall represent the lowest need level and 5 the highest.
7. Admissions and Assessment.
- A. MacDougall-Walker Correctional Institution. Any male inmate 18 years of age or older and sentenced to greater than two (2) years shall normally be admitted to MacDougall-Walker Correctional Institution. Risk and comprehensive needs assessment shall be completed over a period of 10 business days. Upon completion of the classification assessment, the inmate shall be transferred to an appropriate facility.
 - B. Direct Admission Facilities. Any male inmate in pretrial status or sentenced to two (2) years or less shall be admitted to the direct admission facility serving the court of jurisdiction (i.e., Hartford, Bridgeport, New Haven or Corrigan-Radgowski

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- Correctional Centers). Risk and needs assessments shall be completed in accordance with Section 8 of this Directive.
- C. York Correctional Institution. Any sentenced and/or pretrial female inmate shall be admitted to York Correctional Institution. Risk and needs assessments shall be completed as required in Section 8 of this Directive.
 - D. Manson Youth Institution. Any sentenced and/or pretrial male inmate age 14-17 shall be directly admitted to Manson Youth Institution. Risk and needs assessments shall be completed as required in Section 8 of this Directive.
 - E. Juvenile Offenders (ages 14 and 15). Manson Youth Institution shall house all male juvenile offenders and York Correctional Institution shall house all female juvenile offenders. No other facility shall knowingly accept a juvenile offender. Any facility receiving an offender in this category shall immediately report the admission to the Offender Classification and Population Management Unit. The receiving facility shall also make an immediate psychiatric referral to ensure that qualified staff evaluate the offender as soon as possible upon admission in accordance with Administrative Directive 8.5, Mental Health Services. In addition, the receiving facility shall place the juvenile in Administrative Detention and make an immediate request for priority transfer to Manson Youth Institution as appropriate. Whenever possible, prior to transfer, facility classification staff shall complete, at a minimum, an initial risk assessment. Both Manson Youth Institution and York Correctional Institution shall develop Unit Directives that provide for the unique orientation, housing, and program needs of the juvenile offender.
8. Classification Assessment. Offender classification assessments shall be based upon the individual risk and needs of the inmate.
- A. Risk Assessment. An inmate's risk assessment shall represent the inmate's potential for violence, escape, or disruption of the orderly functioning of a facility or other place of confinement. The level of risk is determined by rating the following factors:
 - 1. History of escape;
 - 2. Severity/violence of the current offense;
 - 3. History of violence;
 - 4. Length of sentence;
 - 5. Presence of pending charges, bond amount and/or detainers;
 - 6. Discipline history; and,
 - 7. Security Risk Group membership.
 - B. Inmate Needs Assessment. An inmate's needs shall be assessed in the following areas:
 - 1. Medical and health care;
 - 2. Mental health care;
 - 3. Education;
 - 4. Vocational training and work skills;
 - 5. Substance abuse treatment;
 - 6. Sex offender treatment; and,
 - 7. Community resources.

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Assessment of inmate needs shall be accomplished by classification staff in conjunction with staff responsible for the evaluation and provision of services for the need area.

- C. Overall Risk Score. An overall classification assessment score shall be determined for each inmate. An overall risk score is determined by the highest rating assigned to any of the seven (7) factors outlined in section 8(A) of this Directive, with the exception of the sex offender treatment need score in Section 8(B) of this Directive. No inmate with a sex offender treatment need score of 2 or greater shall be assigned an overall score below level 3 without authorization from the Commissioner or designee. The overall score shall be assigned taking into account the inmate's risk assessments and behavior during confinement.
 - D. Overrides. An overall risk score may be increased or decreased through an override. An override of the inmate's overall risk score shall be documented in writing and approved by the Unit Administrator in consultation with the Director of Offender Classification and Population Management or designee. An override shall not be used to decrease an inmate's risk level score more than once during any term of continuous sentenced incarceration. No inmate shall be overridden to level 1.
9. Initial Classification Review. A preliminary classification risk assessment shall begin within the first two (2) business days of commitment. A preliminary risk classification shall be determined prior to transfer to a level 3 or higher risk level confinement. Full initial classification shall be completed prior to any transfer to any level 2 facility. Within 14 days of commitment to the Department, the initial overall risk score shall be assigned. Within 30 days, the needs assessment and full initial classification shall be completed.
10. Reclassification Review. After initial classification, the inmate's risk level and needs shall be regularly reviewed or immediately following any change in an inmate's status that may affect the risk score as follows:
- A. Regular Reclassification. An inmate's risk and needs shall be reviewed every six (6) months after the initial classification has been established with the exception of the following:
 - 1. annually for level 3 and 4 general population inmates with greater than five (5) years remaining on their sentence; and,
 - 2. inmates currently in the custody of the Department being held solely for federal authorities, to include inmates held for the United States Department of Homeland Security (Bureau of Immigration and Customs Enforcement), with no pending Connecticut charges, and no Connecticut sentence to serve, need only to have a regular review conducted annually.
 - B. Risk Level Reductions. A reduction of the inmate's risk level shall be reviewed as follows:
 - 1. Reduction from Overall Risk Level 5. All inmates assigned to overall risk level 5 will be assigned to Administrative Segregation. Inmates approved for removal from

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- Administrative Segregation as per Administrative Directive 9.4, Restrictive Status, shall be reduced to the appropriate overall risk level 4 status. Any inmate assigned to Administrative Segregation shall not have the risk level reduced without the approval of the Commissioner or designee. Any inmate assigned to risk level 5 shall be reviewed at a minimum, annually for regular review or upon completion of the Administrative Segregation Phase Program.
2. Reductions from Risk Level 4 to 3 and Risk Level 3 to 2.

Reductions of risk level shall be considered after a sentenced inmate has completed a prescribed amount of time in confinement as noted below. Any inmate serving a life sentence with no possibility of parole or release is not eligible for a risk level decrease without the review and approval of the Director of Offender Classification and Population Management. The percentage of time served for determinate sentences shall be computed on the estimated release date for offenses committed prior to October 1, 1994, and on the maximum release date for offenses committed on or after October 1, 1994. The percentage of time served for indeterminate sentences shall be computed based on the projected discharge date. Parole status shall only be considered when a firm Voted to Parole (VTP) Date has been granted by the Board of Pardons and Paroles, at which time the VTP Date may be considered the release date for percentage of time calculations. Any inmate serving a sentence for a sex related offense or having a history of sex related offenses shall be approved by the Commissioner or designee prior to being classified below risk level 3. If not approved, the reason for a denial of a routine level reduction shall be documented on the Offender Classification Form (OCF). The schedule for risk level reductions and eligibility criteria for these reductions shall be as follows:

- a. Level 4 to 3. Inmates must serve 35% of their time since their last risk score change and must be free from Class A disciplinary action for the preceding 120 days and Class B disciplinary action for the preceding 90 days.
- b. Level 3 to 2. Inmates must serve 30% of their time since their last risk score change and must be free from Class A disciplinary action for the preceding 120 days and Class B disciplinary action for the preceding 90 days.

Once an inmate meets the eligibility criteria above, a risk level reduction review shall be completed.

An overall level 4 inmate with more than fifteen (15) years left to serve on a sentence shall not be reduced to an overall level 3 without consulting with the Director of Offender Classification and Population Management or designee. An overall level 3 inmate with more than seven (7) years left to serve on a sentence shall not be reduced to an overall level 2 without consulting with the Director of

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Offender Classification and Population Management or designee.

3. Reduction to Risk Level 1. Reduction to risk level 1 shall be in accordance with Section 11 of this Directive.
 4. Reduction Based on New Information. Receipt of new information regarding the inmate may also require a classification review and a risk level reduction. A reduction may be prompted for one of the following reasons:
 - a. A reduction of charges against the inmate;
 - b. A removal of a detainer;
 - c. Sentence modification and reduction of sentence;
 - d. Reduction in bond; and/or
 - e. Successful Security Risk Group Renunciation.
 5. Reduction Exclusion Based on Assignment Refusal. A sentenced inmate who refuses to participate in an available educational or programmatic assignment, consistent with assessed needs in accordance with Section 8(B) of this Directive, may be precluded from a classification reduction until the inmate complies with a mandatory classification program assignment as identified in the Program Index Compendium.
 6. Disciplinary History Factor Reduction. During an initial assessment, an inmate's discipline history factor shall be reviewed to determine whether or not any change is warranted. If the inmate has not been found guilty of a class A or B disciplinary violation in accordance with Administrative Directive 9.5, Code of Penal Discipline for one (1) year, (six (6) months for inmates under 16 years of age), a reduction of one (1) level may be made to this factor.
11. Community Release Programs. The community release program shall provide an eligible inmate with the opportunity to reintegrate into the community. Any inmate who refuses to participate in an available educational or program assignment, consistent with the inmate's assessed needs in accordance with Section 8(B) of this Directive, may be excluded from community transfer consideration until the inmate complies with the classification assignment. A member of a Security Risk Group in accordance with Administrative Directive 6.14, Security Risk Groups, shall be excluded from community transfer consideration. Program placement may include Transitional Supervision or Residential Program Placement as follows:
- A. Transitional Supervision.
 1. Eligibility Criteria. An inmate incarcerated by the Department of Correction for a definite total effective sentence of two (2) years or less shall, subject to the following criteria, be eligible for consideration for Transitional Supervision. The two (2) years maximum sentence shall include any unpaid fine calculated consecutively at the daily cost of incarceration per day. In addition, the following criteria must be met:

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- a. Be classified below level 5;
- b. Served at least 50 percent of the sentence imposed less jail credit on the controlling sentence;
- c. Must not be serving the mandatory portion of Driving While Intoxicated, Section 14-227(a) of the Connecticut General Statutes or a Driving under Suspension offense that originally was related to a Driving while Intoxicated, Section 14-215(c) sentence of the Connecticut General Statutes;
- d. Favorable recommendations for inmates with a sex offense treatment need score greater than 1 shall be forwarded to the Director of Offender Classification and Population Management for review and approval in consultation with appropriate Mental Health staff;
- e. Favorable recommendations for inmates with mental health need scores greater than three (3) shall be forwarded to the Director of Health and Addiction Services for review to further ensure continuity of care;
- f. Remain discipline free of a class A offense during the preceding 120 days;
- g. Remain discipline free of a class B offense during the preceding 60 days;
- h. Remain escape free from any community release program, to include absconding from parole, during the preceding 120 days, may be waived at the discretion of the Unit Administrator;
- i. Have no pending charges or detainers unless bond has been posted, except pending out of state charges below risk level 4 with official verification that the state will not extradite;
- j. Not designated as a Security Risk Group member; and,
- k. Have an approved sponsor and/or have secured housing at an acceptable residence approved by Parole and Community Services.

Class A and B disciplinary reports may be waived at the discretion of the Unit Administrator.

2. Eligibility Date and Notification. Within two (2) weeks of sentencing, unit classification staff shall determine the date that an eligible inmate may be placed on Transitional Supervision. When an inmate is not recommended for placement on Transitional Supervision at the facility level, the Transitional Supervision package shall be forwarded to the appropriate District Administrator for review. The District Administrator, who may consult with the Director of Offender Classification and Population Management regarding the suitability of placement, shall review the package and either uphold or overturn the decision and establish a placement date. If a placement date is established, the District Administrator shall notify the Unit Administrator of the facility housing the inmate and the Parole and Community Services Unit. The Unit Administrator shall then inform the inmate of the placement date.

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3. Risk Level. Upon approval for Transitional Supervision an inmate shall be classified to overall risk level 1.

B. Residential Program Placement.

1. Eligibility Criteria. An inmate may be eligible for transfer to a residential work or education program when the following criteria are met:
 - a. Be classified level 2 or 3;
 - b. Be within 18 months of estimated discharge date or Voted to Parole date;
 - c. Must not be serving the mandatory portion of Driving While Intoxicated, Section 14-227(a) of the Connecticut General Statutes or a Driving under Suspension offense that originally was related to a Driving while Intoxicated, Section 14-215(c) sentence of the Connecticut General Statutes;
 - d. Remain discipline free of a Class A offense during the preceding 120 days;
 - e. Remain discipline free of a Class B offense during the preceding 60 days;
 - f. Have no return from escape, to include absconding from parole, within the past six (6) months (may be waived at the discretion of the Unit Administrator);
 - g. Remain free of community release program failure during the preceding 120 days;
 - h. Have no pending charges or detainers unless bond has been posted except pending out of state charges below risk level 4 with official verification that the state will not extradite;
 - i. Met the requirements for participation in job opportunities, employment preparation, educational placement or substance abuse training and education;
 - j. Must not be a designated Security Risk Group member;
 - k. Favorable recommendations for inmates with a sex offense treatment need score greater than 1 shall be forwarded to the Director of Offender Classification and Population Management for review and approval in consultation with appropriate Mental Health staff; and,
 - l. Must submit to felony DNA requirements, if applicable.

Class A and B disciplinary reports may be waived at the discretion of the Unit Administrator.

2. Risk Level. Upon approval for residential program placement an inmate shall be classified to overall risk level 1.

C. Pretrial Supervision.

1. Eligibility Criteria. A pretrial offender shall be eligible for pretrial supervision when the following criteria are met:

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- a. Pretrial confinement for no offense other than class D felony or misdemeanor. The following class D felonies are excluded from consideration:
 1. 53a-60a, Assault in the second degree with a firearm;
 2. 53a-60b, Assault on a victim 60 or older, second degree;
 3. 53a-60c, Assault on a victim 60 or older, with a firearm;
 4. 53a-60d, Assault in the second degree, with a motor vehicle;
 5. 53a-72a, Sexual Assault in the third degree;
 6. 53a-73a, Sexual Assault in the fourth degree; and,
 7. 53-181c, Stalking in the first degree;
- b. No community release violation during the preceding 120 days, may be waived at the Unit Administrator's discretion;
- c. Must not have been found guilty of a Class A disciplinary report within 120 days, may be waived at the Unit Administrator's discretion;
- d. Must not have been found guilty of a Class B disciplinary report within 60 days, may be waived at the Unit Administrator's discretion;
- e. No escape or absconder status within the past 6 months; and,
- f. Favorable recommendations for inmates with mental health need scores greater than 3 shall be forwarded to the Director of Health and Addiction Services for approval and to further ensure continuity of care.

Upon approval, an offender shall be classified to overall risk level one (1).

2. Supervision Level for Pretrial Offenders. Any pretrial offender assigned to overall risk level one (1) shall be supervised by electronic monitoring or any other monitoring technology or services while on pretrial supervision. A pretrial release agreement shall specify that the inmate must:

- a. not change residence without prior approval of the supervising officer;
- b. appear for all court appearances as required;
- c. participate in substance abuse programming if required by the Department; and,
- d. participate in any other conditions imposed by the Department.

12. Risk Level Increases. Risk level increases shall occur as required upon receipt of new information pertinent to the inmate's risk classification or inmate's disciplinary adjustment.

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- A. Disciplinary Increases. Poor disciplinary adjustment may result in an inmate's Overall Risk Factor being increased and a corresponding increase of the Discipline History Factor to the level of the Overall according to the schedule detailed in the Classification Manual.

An inmate who is found guilty of a level 2 assault on a Department of Correction employee as defined in Administrative Directive 6.6, Reporting of Incidents, shall be classified to overall risk level 4 with a corresponding increase in the Discipline Risk Factor.

In the event of multiple disciplinary charges arising from a single disciplinary incident, only the highest chargeable class of offense shall be used.

An inmate assigned to Close Custody for Chronic Discipline shall automatically be classified to Overall and Discipline Risk Factor 4.

Reviews resulting in an overall risk level increase which will require a transfer to another facility shall require the approval of the Director of Offender Classification and Population Management.

- B. Conviction of a Felony. Conviction of a felony committed while incarcerated shall result in a level increase review.
- C. Assignment to Overall Risk Level 5/Administrative Segregation. Assignment to Overall Risk Level 5/Administrative Segregation shall be considered when any totality of facts, information or circumstances which indicates an immediate threat to safety and/or security of the public, staff or other inmates. An inmate shall be automatically placed in Administrative Detention and be reviewed for placement on Overall Risk Level 5/Administrative Segregation, under any of the following conditions:
1. Level 1 assault on a Department of Correction employee as defined in Administrative Directive 6.6, Reporting of Incidents;
 2. Hostage holding of a Department of Correction Employee;
 3. Riot;
 4. Homicide while confined;
 5. An inmate is sentenced to death;
 6. Escape from the security perimeter of a facility;
 7. Continues to present a threat to safety, security and/or orderly operation after one (1) year in Close Custody for Security Risk Groups;
 8. Continues to present a threat to safety security and/or orderly operation after six (6) months in Close Custody for Chronic Discipline; and,
 9. An inmate is in pretrial or pre-sentence status for a Capital Felony Murder charge.

All increases to Overall Risk Level 5/Administrative Segregation shall be made by the Director of Offender Classification and Population Management.

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- D. Security Risk Group Members. Any inmate designated as a Security Risk Group Member shall not be classified lower than overall risk level 3 and placed in a Close Monitoring unit in accordance with Administrative Directive 6.14, Security Risk Groups. An inmate released from the Department while designated as a Security Risk Group Member shall be readmitted on the same status. The Director of Security shall review the designation in accordance with Administrative Directive 6.14, Security Risk Groups.
 - E. Security Risk Group Safety Threat Members. Any inmate designated as a Security Risk Group Safety Threat Member shall be classified to overall risk level 4 and placed in a Close Custody unit in accordance with Administrative Directive 6.14, Security Risk Groups. An inmate released from the Department while designated as a Security Risk Group Safety Threat Member shall be readmitted on the same status. The Director of Security shall review the designation in accordance with Administrative Directive 6.14, Security Risk Groups.
13. Risk Level Reclassification from Community Placement. Risk level increases from overall risk level 1 for inmates remanded to custody and whose community transfer has been revoked, requires a risk reclassification hearing. Also, the parole supervisor shall provide the inmate with the following:
- A. Within 72 hours of the re-incarceration, a statement of reasons for the proposed increase from risk level 1 status except those that may cause a security problem or undue harm to the public;
 - B. A copy of any documents pertaining to such statement of reasons unless the security of the facility and public warrants otherwise.
 - C. A notification of the date, time, and location of a hearing on such proposed revocation. This notice shall state that the inmate may appear at such hearing with a correctional advocate as a representative and present documents at such hearing on the inmate's behalf.
- Any inmate in community placement status and returned to a level 2 or higher security facility shall have a classification hearing within 14 days of return to the facility. This time limit may be extended for cause. A disciplinary hearing shall not substitute for a classification hearing. A classification hearing shall not consider disciplinary matters unless the inmate has been found guilty of an offense under Administrative Directive 9.5, Code of Penal Discipline. A classification hearing may consider reclassification for a non-chargeable matter and return the inmate to a higher security facility prior to a disciplinary hearing on a chargeable offense. Classification shall not be used to avoid a disciplinary hearing for an inmate. Records of the disciplinary hearing, including information provided by the inmate, shall be forwarded to the counselor supervisor or higher authority as appropriate. If the inmate's assignment to risk level 1 is revoked, the counselor supervisor or higher authority shall state the reasons in writing and change the risk level. The risk score will be increased to overall risk level 2, except in the case where new information would result in a level increase due to a change in one of the risk factors.

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- D. Notwithstanding the above provisions, this criterion shall not interfere with the use of discretion invoking incremental sanctions by a parole officer or higher authority for technical, non-criminal violations to include, but not be limited to intervention, increased programming, detoxification and electronic monitoring through the Community Release Intervention Program as enumerated below:
1. When necessary, inmates shall be temporarily remanded to custody by the Parole and Community Services Unit. All remands to custody shall be documented on CN 9202, Offender Classification History Form and placed in the inmate's master file;
 2. No classification transaction shall be required, unless it has been determined that the inmate will not be placed back into the community;
 3. Classification staff shall notify Addiction Services when an inmate is returned for a positive urinalysis so as to provide necessary intervention;
 4. The Parole and Community Services Unit shall review and track each case and make necessary modifications to the inmate's conditions of release for reinstatement into the community; and,
 5. If it is determined by the Unit Administrator, in consultation with the Director of Parole and Community Services, that the inmate is not appropriate for re-release, the inmate shall then be scheduled for a reclassification hearing and reviewed for an overall level increase as appropriate and considered for a transfer to a sentenced facility if the inmate has greater than 15 days to discharge.
14. Risk Level Reclassification Resulting from New Information. Whenever new information is received that is relevant to an inmate's risk or needs classification, a reclassification review shall occur.
15. Inmate Involvement. An inmate should be involved in program decisions to the extent feasible. The inmate shall be seen by classification staff for every objective classification action except Percentage-of-Time Reviews unless the inmate is denied. The inmate may appear before the classification staff as required by this Directive, as long as the appearance does not jeopardize the safety and security of the facility, staff, or other inmates. If an appearance of the inmate is required, the inmate shall receive notice 48 hours prior to classification review. An inmate may waive, in writing, the notice requirement or any appearance. Within five (5) days of a classification decision, the decision, including the overall risk score and need ratings assigned the inmate as well as any changes of these ratings shall be shared with the inmate in writing. A classification decision may be appealed to the Unit Administrator or designee within 15 days of the decision.
16. Level of Review Required for Classification Reviews. The Unit Administrator shall designate staff within the unit responsible for classification reviews and assignments. With the exception of classification assignments made by the Director of Offender Classification and Population Management, classification decisions may

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be appealed to the Unit Administrator. The Unit Administrator shall respond in writing within 15 business days of receipt of the appeal.

17. Inmate Supervision Requirements. Supervision requirements during transport shall be in accordance with Administrative Directive 6.4, Transportation and Community Supervision of Inmates. All other inmate supervision outside the facility's perimeter with the exception of Administrative Directive 9.8, Furloughs, shall be governed by an inmate's risk level in accordance with the following:
 - A. An inmate classified as level 3, 4 or 5 shall be excluded from a job or program assignment that is outside the facility's security perimeter. Any security classification level 3, 4 or 5 inmate, who is to be moved beyond the facility's security perimeter, shall be managed in accordance with Administrative Directive 6.4, Transportation and Community Supervision of Inmates.
 - B. Any inmate who is placed on facility-based outside clearance, shall be intermittently observed by a Department of Correction employee at a minimum of once every hour or continuous if deemed appropriate by the Unit Administrator or designee.
 - C. An inmate placed on a community service work detail shall be intermittently observed by an approved trained agent of the municipality or other state agency at a minimum of every 15 minutes, or continuously if deemed appropriate by the Unit Administrator or designee. Additional stipulations and supervision requirements shall be pursuant to the provisions of Administrative Directive 10.5, Public Service Work, and enumerated in a Memorandum of Understanding between the Department of Correction and the requesting town, municipality or state agency.
18. Other Classification Actions.
 - A. Outside Work Assignments. The Unit Administrator shall be the approving authority for any inmate placed on facility-based outside clearance, community service work detail, or work or education release. Prior to authorization to participate in the above listed programs, a review of the inmate's special management information and any discretionary release denial or return within the past 30 days (if any), shall be conducted to determine the inmate's suitability for such programming. Authorization to participate shall be based on the following minimum eligibility criteria utilizing CN 9201, Outside Work Assignment Application:
 1. Risk level 1 or 2;
 2. No sex offender treatment score greater than a 1;
 3. No level 4 convictions, past or current offense;
 4. Mental Health and Medical need scores less than 3 unless cleared by Health Services;
 5. Within 36 months of end of sentence or voted to parole date;
 6. No return from escape within 1 year;
 7. No Class A disciplinary reports within 120 days and no Class B disciplinary reports within 60 days;
 8. No detainer score greater than a 1; and,
 9. No history of classification as an overall risk level 5.

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Any inmate already approved or being considered for outside clearance who has been denied or has returned from any discretionary release program such as community release or parole within the last 30 days, shall be evaluated by the Unit Administrator to assess the appropriateness of an outside work assignment.

Any inmate already approved for outside clearance that has received a disciplinary report or has been involved in any incident shall also be evaluated by the Unit Administrator for continued placement on outside clearance.

- B. Indeterminate Sentences. The Commissioner may release any inmate sentenced to an indeterminate sentence pursuant to Sections 21a-277(d) or 21a-279(e) of the Connecticut General Statutes, at any point during that sentence. The Unit Administrator may recommend release at any time during the sentence. Only favorable recommendations shall be forwarded to the Commissioner's Office via the Director of Offender Classification and Population Management. The initial review shall be made after the completion of initial classification and a 30-day period of confinement. If denied, the Unit Administrator shall set another review date not more than six (6) months from the decision date. Each review and disposition shall be documented on CN 9202, Offender Classification History Form in Section 5 of the inmate's master file.

19. Forms and Attachments. The following forms are applicable to this Administrative Directive and shall be utilized for the intended function.
- A. CN 9201, Outside Work Assignment Application; and,
 - B. CN 9202, Offender Classification History Form.
20. Exceptions. Any exceptions to the procedures in this Administrative Directive shall require prior written approval from the Commissioner.

Exhibit E

NO: NNH CR12-0269702T
N23NCR09-02552932
STATE OF CONNECTICUT

: SUPERIOR COURT
:
: JUDICIAL DISTRICT
OF NEW HAVEN

V.

: AT NEW HAVEN, CONNECTICUT

WILLIE BREYETTE

: MARCH 25, 2015

BEFORE THE HONORABLE PATRICK J. CLIFFORD, JUDGE

A P P E A R A N C E S:

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Recorded By:
Frances Ortiz

Transcribed By:
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235 Church Street, 7th Floor
New Haven, CT 06510

NO: NNH CR12-0269702T
N23NCR09-02552932
STATE OF CONNECTICUT

: SUPERIOR COURT
:
: JUDICIAL DISTRICT
OF NEW HAVEN
:
: AT NEW HAVEN, CONNECTICUT
:
: JUNE 5, 2015

V.

WILLIE BREYETTE

BEFORE THE HONORABLE PATRICK J. CLIFFORD, JUDGE

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1 THE COURT: State versus Willie Breyette. For
2 the record, on March -- on March 25th, the defendant
3 entered -- entered a plea of guilty to conspiracy to
4 commit robbery in the first degree under subsection
5 A, 2 and also admitted a violation of probation in
6 which he owed four years on a possession of narcotics
7 charge.

8 The State and the defense had worked out an
9 agreement that the defendant would receive a total
10 effective sentence of 20 years suspended after 15
11 years in prison, five years is non-suspendable,
12 followed by three years of probation.

13 The agreement also is that he would be
14 registering on the gun registry because of the nature
15 of the conviction.

16 I have read the pre-sentence report -- I've read
17 the pre-sentence report and counsel you've -- you've
18 gone over the pre-sentence report with your client;
19 is that correct?

20 DEFENSE: Yes, your Honor.

21 THE COURT: Now, you did point out to me in
22 chambers some corrections or changes. It looks like
23 in the pre-sentence report where they summarize the
24 offense, they use the word defendant on the first
25 paragraph of page three, but apparently they're
26 referring to Mr. Resto there, the co-defendant and
27 you want me to make those changes from defendant to

1 co-defendant on the four parts of that and also on
2 the, one, two, three, the fourth paragraph; correct?

3 DEFENSE: That's correct, your Honor.

4 THE COURT: All right. I will grant that motion
5 and have the clerk make those corrections.

6 All right. Then I would ask the State obviously
7 if they wish to be heard? If there's a family member
8 who wants to address the Court also.

9 ATTY. GARBARSKY: Yes, your Honor, I would like
10 an opportunity to be heard very briefly. I'll
11 indicate that there are three individuals that are
12 present from the family today. Two individuals who
13 would like to be heard and also Mr. Suzio who would
14 like to read a victim impact statement that's
15 provided by, I believe, the decedent's wife.

16 THE COURT: Okay.

17 ATTY. GABARSKY: In regards to the State's
18 comments, I'll first echo the sentiment of defense
19 counsel that the factual basis that's written in the
20 PSI seems to reflect more of a factual basis from the
21 co-defendant a Mr. Resto.

22 Certainly, the facts in regards to the robbery
23 were sufficient. This is an incident, as the Court
24 is well aware, that occurred back in June the 27th,
25 back in 2012 in the City of Meriden, where the victim
26 Ibrahim Ghazal, had been working at the EZ Mart, had
27 actually very recently become a full owner of that

1 establishment.

2 At approximately 1:30 a.m., the co-defendant,
3 Mr. Resto, had entered having been driven to the
4 establishment by this defendant, Mr. Breyette. There
5 was a demand for the money. The victim at no time
6 resisted. In fact, he immediately handed over money.
7 There was no argument, there was nothing to indicate
8 any violence on behalf of the victim; nonetheless,
9 Mr. Resto at short range, shot the victim in the
10 chest with a firearm, which ultimately resulted in
11 his death.

12 The police department received footage in
13 regards to the possible vehicle that was used in this
14 incident and further investigation revealed that, in
15 fact, Mr. Breyette was the driver of the vehicle that
16 drove Mr. Resto to commit this homicide.

17 This matter, as the Court is well aware, had
18 been placed on the jury list for quite a period of
19 time and quite succinctly, the reason was that Mr.
20 Breyette had denied any knowledge of the robbery,
21 denied any knowledge of being involved in the
22 homicide.

23 It was later brought forward, after some DNA
24 evidence was gathered on behalf of another robbery
25 that took place, also in the City of Meriden by
26 police detectives, particularly Dean Benoit, who's
27 present in court today, and that DNA evidence linked

1 Mr. Breyette, as well as Mr. Resto to another robbery
2 that occurred many months before this robbery and
3 murder and certainly that, in the State's mind,
4 proved that he had intimate knowledge of the fact
5 that Mr. Resto was at least going to commit a robbery
6 at this time, in this case, June 27th, if not the
7 murder itself.

8 The State feels that the sentence that was
9 agreed upon is appropriate in light of those factors;
10 however, I would like to just make a few more
11 comments in regards to the PSI.

12 Mr. Breyette, was interviewed briefly and he may
13 have more to say today in front of the Court;
14 however, he presents as someone who is fearful and
15 under the thumb of Mr. Resto. I'm not entirely sure
16 how that would bear out if this case had gone to a
17 jury; however, on page four of the PSI he indicates
18 that Resto, quote, put him in his place and that he
19 was, quote, coerced and threatened by Resto. Again,
20 he didn't make any further comments at that time.

21 He does have a limited prior criminal history,
22 which I think is to his credit; although he stands
23 here having been violated on his probation for an
24 underlying narcotics offense, which he's going to be
25 sentenced here today as well.

26 In regards to the victim's attitude in this
27 case, the PSI writer talked to the victim's son, as

1 well as the daughter, as well as his wife and to say
2 that this had a devastating effect on the family
3 would be a significant understatement. This has been
4 a torturous road for this family for the past several
5 years. First dealing with the potential trial and
6 then ultimate outcome of the co-defendant, Mr.
7 Resto's case and then confronted with the potential
8 trial in regards to this case. I understand that Mr.
9 Doyle, former -- Judge Doyle now, former State's
10 Attorney handled Mr. Resto's matter.

11 I have personally with my co-counsel, Mr. Doyle,
12 Jack Doyle not to be confused with his Honorable,
13 several times and over the course of that time the
14 victims have been truly devastated by this incident.

15 They lost a patriarch of a very close-knit family
16 and quite frankly, they've yet to be fully recovered
17 from this and they may be never fully recovered from
18 this loss.

19 The victim's wife has indicated that she still
20 suffers from nightmares, she wakes up screaming and
21 according to her comments to the PSI writer, quote,
22 we will never get over this.

23 The Court's aware, based on previous statements
24 that were given by the victim's son, that they
25 believe that there is a greater conspiracy in regard
26 to this incident. Specifically, they believe that
27 this was actually a hired assassination by Mr.

1 Breyette of the victim Mr. Ghazal based on the fact
2 that he had recently taken over this gas station or
3 convenience store, I should say. There's just simply
4 no evidence of that. I'm not in any way trying to
5 place fault or blame on the victim's son for having
6 these perceptions, I just don't feel that during the
7 course of the investigation there was anything
8 gathered, in form of evidence, by the detectives
9 involved in this matter that would prove that a
10 conspiracy existed and certainly the State did not
11 feel that they had sufficient evidence to proceed on
12 conspiracy charges, based on that information.

13 In conclusion, your Honor, I would echo the
14 sentiments of the PSI writer who closes at the end of
15 page 10 indicating that the offenses had, quote, a
16 devastating effect on the entire family which was
17 emotionally, physically, and financially devastating.
18 I believe that in light of those factors, in light of
19 his prior history, this is an appropriate sentence
20 and I would ask that the Court sentence him to the
21 agreed upon sentence at this time.

22 If it's appropriate, perhaps the Court would
23 hear from the victim's family.

24 THE COURT: That's fine. Yes, certainly and
25 who's this and what's your name?

26 MERA GHAZAL: My name is Mera Ghazal.

27 THE COURT: Okay. You want to say something to

1 me?

2 MERA GHAZAL: Yeah.

3 THE COURT: Go ahead. Take your time.

4 MERA GHAZAL: Your Honor, my name is Mera
5 Ghazal. I'm eight years old and I'm here to talk
6 about my grandpa. The first thing I want to tell you
7 is I never saw my grandpa. I also had no chance to
8 play with him. I want to know who killed my grandpa.
9 Thank you, your Honor.

10 THE COURT: Thank you, very much.

11 FABIO GHAZAL: Good afternoon, sir.

12 THE COURT: Just state your name for the record.

13 FABIO GHAZAL: I'm sorry, sir.

14 THE COURT: It's okay. Take your time.

15 FABIO GHAZAL: My name is Fabio Ghazal.

16 THE COURT: It's okay. It'll pick you up.

17 Don't worry.

18 FABIO GHAZAL: And this is my statement, but I
19 like --

20 THE COURT: Do you want the Victim Advocate to
21 read it?

22 FABIO GHAZAL: No. No. No. No, sir.

23 THE COURT: Okay. All right.

24 FABIO GHAZAL: No. No. No. No. It's like I
25 make like a lot of statement from like, you know, I
26 know we are -- Even when I came here I change like
27 all my mind. I change all my story and seriously I

1 feel very, very sad. Please, your Honor, this is --
2 (crying) I'm sorry.

3 THE COURT: Take your time.

4 FABIO GHAZAL: I'm sorry, it's not --

5 THE COURT: You don't have to apologize.

6 FABIO GHAZAL: Your Honor, this just give me --
7 I know you are very busy, please just give me --

8 THE COURT: I'm not busy.

9 FABIO GHAZAL: Thank you, your Honor. Your
10 Honor, I think I shocked when I know this guy here he
11 plan to be guilty and they gonna give him 15 to 20
12 years. Now, I'm going to say something and this is
13 now just I thought about it. When this happened, the
14 murder, all my family they are shocked and we not be
15 like together and I have information, my sister she
16 has different information, my mother she has
17 information, but we never ever be together to make
18 one decision. This -- My other -- this is not that
19 well, but you understand what I talk, sir? It's like
20 we not -- never sit together and we say yes, we gonna
21 do this thing. So I have my own information. My
22 sister, she has her own information. Each one here
23 has own information.

24 I ask the guards today when I came to see you,
25 your Honor. It's like I find something I never know
26 about it. Now, your Honor, I say something and the
27 gentleman he say, yeah, they called the police and

1 they think somebody behind this guy, he killed my
2 father and this gentleman he said we cannot --
3 there's no proof about it, but I have my own
4 information.

5 I never got chance to talk with any detective.
6 I believe something. You can't say to me, do you
7 have proof. I can say to you, sir, nobody come and
8 talk to me and my mother brought me -- We have a lot
9 of secret and serious we have big secret nobody know
10 about it, because nobody ask us about it.

11 My mom she got call -- call. I'm sorry, your
12 Honor. My mom she got a phone call and I got phone
13 call from my father, he say to my mom, that's what my
14 mom she said, I -- this is going to be the last time,
15 I think, we're going to talk together. She said to
16 him, why. He say, because somebody he threaten me
17 and we no -- I find out just three days ago. I
18 wasn't talk to my mom.

19 I'm so sorry, sir. I'm so sorry. When I --
20 Okay. And we know who came down to threaten my
21 father with this murder. Nobody we know. The FBI,
22 the police, here they are -- did great job, but is
23 enough? No, sir, it's not enough.

24 No anyone can say I'm not smart. Nobody. You
25 have your opinion. I have my opinion. He has his
26 opinion. But they not come and talk to us. This --
27 What's going on, told the details, because anyone and

1 I don't want to talk this publically -- public. I
2 can't come between you and I, I can tell you what I
3 have because nobody know about it. Nobody know about
4 it. Nobody know where my father he got money.
5 Nobody. It's secret money, but he got it from where?
6 Nobody know about it.

7 My father he got credit from this one, so your
8 Honor --

9 THE COURT: Are you saying your father got money
10 to buy the store and that he got killed because of
11 where he got the money from?

12 FABIO GHAZAL: Yes, sir.

13 THE COURT: All right.

14 FABIO GHAZAL: I'm not -- Because the last lady
15 here, she said to me the last time, serious she make
16 me very upset, look don't try because you're going to
17 lose -- you're going to lose the store. You already
18 use that, sir, I'm not talking about the store. The
19 store, the money, mean nothing for us. I can sit,
20 sir?

21 THE COURT: Sit.

22 FABIO GHAZAL: What's mean -- Okay. Now, I'm
23 going to tell you something and everyone even the
24 media they say my father he saved this money. No, my
25 father he not save this money. Anyone here, I'm
26 sorry, sir. Anyone here, you're involved in this
27 case even Mr. Suzio, he say this guy he saved the

1 money for 10 years. Did you know, sir, where my
2 father got that money? Please, I told you --

3 THE COURT: Listen, okay, I'm not going to allow
4 you to ask questions of anybody.

5 FABIO GHAZAL: I'm so sorry, sir.

6 THE COURT: You don't have to apologize. All
7 right. This is a sentencing, okay, and you're making
8 it sound like you've got information that you want to
9 tell me. I assume whatever information you have that
10 there's something bigger than what the State feels
11 this is, that you have presented it to them and/or
12 the police or whoever. This is a sentencing for this
13 defendant who has pled guilty to a conspiracy to
14 commit robbery in the first degree.

15 MS. BAGI: Would it be easier to talk, if you
16 talk in your language and the interpreter then
17 translate?

18 FABIO GHAZAL: So that's mean -- Your Honor
19 that's mean -- Your Honor, that's mean --

20 THE COURT: What are you asking me to do?

21 FABIO GHAZAL: Please, I begging you, please,
22 please, please --

23 THE COURT: What?

24 FABIO GHAZAL: We can court try it, because to
25 be honest with you I hear from a lot of people, I
26 talk about this and I hear from a lot of people and
27 that's make me very, very, very upset. I know what

1 I'm talking now. I gonna be in dangers. I know
2 that. I know that, but I don't care. Why, because I
3 lost my father.

4 Now, they said to me exactly, I'm not going to
5 be right and probably in the United States, me I
6 don't know the law about it, but that's what I hear
7 because they want to save money. They have a lot of
8 cases. They want to just finish this case --

9 THE COURT: That's not --

10 FABIO GHAZAL: -- quick.

11 THE COURT: That's not true.

12 FABIO GHAZAL: So, okay --

13 THE COURT: That's not true.

14 FABIO GHAZAL: So, please sir --

15 THE COURT: That's not true.

16 FABIO GHAZAL: Sir -- Please, sir, I say -- as I
17 told you, this is the third time I talk to you, I
18 think even you are Judge you have a heart. I think
19 you are -- everyone, he has charisma. I think you
20 have charisma. I don't know. I don't know what your
21 decision, seriously, I should -- I don't know if I
22 should say that or no. I don't know. I like you and
23 then I see you and I say this is our Judge.

24 So, please, sir, I know you have power, please
25 sir, please sir, please sir, we need a trial. If --
26 Please, sir, we need a trial. Please, sir, we need a
27 trial.

1 THE COURT: And what happens if at a trial it's
2 a not guilty?

3 FABIO GHAZAL: It's not guilty?

4 THE COURT: Not guilty.

5 FABIO GHAZAL: If it's not guilty?

6 THE COURT: Not guilty.

7 FABIO GHAZAL: We gonna be happy.

8 THE COURT: You're going to be happy?

9 FABIO GHAZAL: Yes, sir, because --

10 THE COURT: And if everything you think that's
11 behind this doesn't come into evidence and what the
12 trial is, is of a robbery, where he is alleged to
13 have been the driver of it and at the trial the jury
14 is not convinced, beyond a reasonable doubt, that he
15 actually actively participated and knew there was a
16 robbery. Let's say Mr. Resto comes in and testifies,
17 maybe he lies under oath to help him, I don't know --

18 FABIO GHAZAL: Okay. But --

19 THE COURT: But the jury system is not perfect.

20 FABIO GHAZAL: I know that.

21 THE COURT: It's not going to look into
22 everything you're indicating is behind this, because
23 the State would be vigorously prosecuting that, if
24 they felt there was something to it.

25 FABIO GHAZAL: Can I --

26 THE COURT: Yeah, no, I'm asking you.

27 FABIO GHAZAL: Sir, thank you very much, thank

1 you very much, thank you very much. You give me a
2 little hope. If he's not -- Yeah, we gonna be --
3 Look to be honest with you this -- this guy he has
4 the key. I swear he has the key. This guy he has
5 the key.

6 I'm not angry from Resto, when he was here, I'm
7 not shocked when I saw Resto, I'm shocked when I saw
8 him. I swear to God I didn't sleep for seven days
9 and a lot of people they say to me, look you think
10 you are in America, you think you are in the whole
11 justice, no, it's just for money. They're not going
12 to give you a trial because they doesn't -- Okay.
13 They just catch the killer and that's it. They don't
14 go for life with you.

15 So, please -- Please, sir -- Please, sir.
16 (Crying) Please, sir, it's not about -- It's not, I
17 swear sir, it's not about money. I swear it's not,
18 it's for you, for me, for everybody. Please, sir,
19 please make us happy one time. Please, sir, do a
20 trial. Please, sir. Please, sir, give us chance.
21 Please, sir, God bless you, please, sir. As I told
22 you we have a lot of information and nobody ask me
23 about it.

24 Can I give example just to -- to prove my story
25 okay? We here, when -- I don't know about you, you
26 make me -- you make me comfortable to talk to you.
27 We hear about that terrorist people they attack in

1 9/11, we hear the FBI know they these people and they
2 know where they live and they know everything and
3 they not do nothing. (Undiscernible) Okay. And was
4 the bad, sad happened in September -- September 11th.

5 So anybody made a mistake. I think they did
6 good job, but not great job. They not take, as I
7 told you, the money, as I told you what's going on.
8 So, please, sir, please make us happy. Please, sir.
9 Please. Thank you, sir.

10 THE COURT: Thank you.

11 LEN SUZIO: Thank you, your Honor. My name is
12 Len Suzio, I'm here at the request of Sudguez Ghazal.

13 She prepared a statement, but she can't speak
14 English. She asked if I'd read the statement to the
15 Court.

16 THE COURT: She's -- She's -- I know who she is,
17 but she's the one who had to leave the courtroom.

18 LEN SUZIO: Right. Right.

19 THE COURT: All right. Go ahead.

20 LEN SUZIO: So this is the statement of Sudguez
21 Ghazal regarding Willie Breyette and sentencing of
22 Willie Breyette.

23 Your Honor, members of the court and all others
24 in attendance. Thank you for allowing me to express
25 my thoughts regarding the plea bargain sentence. My
26 family and I object to the agreement between the
27 State and criminal Willie Breyette. We object to the

1 short sentence the State has agreed to for prisoner
2 Breyette. He could be out of prison in 12 years.

3 But we also object because we know that Breyette
4 conspired with other to harm my husband. How do you
5 we know that others were involved in the crime
6 against my husband? We know for two reasons; one,
7 the day before he was murdered in 2012, my husband
8 called me while I was in Jordan and he told me,
9 they're going to kill me. He was referring to a
10 certain group of people that my family has disclosed
11 to investigators.

12 Number two, after my husband was murdered, a
13 woman who knew my husband very well came to our store
14 and told my family that her boyfriend who had been
15 prison and he knew Frankie Resto. She told us that
16 her boyfriend said to her that Frankie Resto was
17 saying in prison that other people were involved in
18 my husband's murder.

19 We shared this information with law enforcement
20 authorities and we know that the Frankie Resto pre-
21 trial investigation report contained some information
22 about this, but until last week we did not even know
23 there was a pre-trial investigation report.

24 We don't know what the report says about this
25 information, other than it was contained within the
26 report. The report and its findings have never been
27 shared with our family.

1 You can imagine, your Honor, how my family and I
2 feel right now. We have good reason to believe that
3 the crime was not a random crime. I heard the words
4 of fear my husband confided to me only a day before
5 he was murdered.

6 With this plea bargain it is possible that other
7 guilty conspirators are not even going to be tried.
8 My family's only hope to bring the entire truth out
9 and for justice to be served is for the Court to
10 order criminal Breyette to stand trial and face the
11 maximum penalty for murder during the commission of a
12 felony.

13 Our desire is not based on vengeance; it's
14 motivated by a desire to know the whole truth of the
15 crime to be exposed. Maybe when prisoner Breyette
16 faces a much longer prison sentence, he may be
17 willing to cooperate with investigators and he will
18 be willing to disclose the whole truth.

19 With these thoughts in mind, your Honor, we ask
20 that you reject the plea deal and order a trial for
21 all the crimes that prisoner Breyette has been
22 charged with.

23 If your Honor, will not order a trial, we
24 respectfully ask that you delay imposing the sentence
25 and order that the investigator report be shared with
26 our family so that we may know what has been said
27 regarding this question, before the sentence is

1 imposed and when we have time to consider the
2 findings of the investigative report.

3 My family would be very grateful, your Honor, if
4 you would grant our wish. Thank you, Sudqueh Ghazal.

5 THE COURT: Thank you. If I can just add I
6 mean, you know, there's claims that there's something
7 now in attorney -- I mean, Mr. Resto's file, I mean,
8 I would assume that if the State had any evidence at
9 all that this was something that's bigger than what
10 it looked like, which what it looks like is a robbery
11 that was committed by Mr. Resto with Mr. Breyette as
12 the get-away driver and it sounds like there was even
13 information that they've done this in the past, that
14 if it was anything beyond that, that the State would
15 have looked into it the best they can or have some
16 other reason for it.

17 These claims that are being made, does the State
18 have any response to that?

19 ATTY. GARBARSKY: Yes. First of all, I'm not
20 familiar at all with the investigator report, I think
21 is how it was termed, that Mr. Suzio was making
22 reference to, quoting from the victim's wife's victim
23 impact statement. I'm not aware of an investigative
24 report and in fact, while Mr. Suzio was concluding
25 his remarks I had an opportunity to speak with the
26 head investigator, a Detective Dean Benoit, and he
27 says all the reports were submitted years ago in this

1 matter. There's been no new reports, no new
2 investigative reports.

3 In regards to the theory that this was something
4 other than a robbery and a planned assassination or a
5 planned conspiracy, I also spoke with Detective
6 Benoit about that. They knew about the allegations
7 of a conspiracy. They fully investigated those
8 allegations. They found no merit to those
9 allegations and in fact to this day, aside from the
10 phone call that was made by the victim the day before
11 that the Court has heard of, there's not a scintilla
12 of evidence to support anything greater than what the
13 State has alleged in its charging Information.

14 THE COURT: So if this was a trial of this
15 defendant, the State's theory on it would be that he
16 was the -- a willing participant and driver of a
17 robbery in which Mr. Resto, during the course of the
18 robbery, killed this victim.

19 ATTY. GABARSKY: That's correct and it -- and
20 all in the same lines as the Court is indicating, if
21 this were to go to trial, if the Court were to grant
22 the wishes by the victim's son, the charges would not
23 change; meaning, I would not increase the charges
24 because I have no good faith basis to increase those
25 charges.

26 The only thing I could think of is that perhaps
27 they're making reference to the pre-sentence

1 investigation in regards to the co-defendant's
2 matter, but I'm not aware nor are the detectives
3 aware of any additional investigative reports
4 regarding what the claims are by the victim's son.

5 If I could make one other comment and then I'll
6 conclude; this was a horrific homicide. This was a
7 brutal, sadistic and perhaps above all senseless
8 murder of someone who was an established and a very
9 well respected member of the community; but again,
10 there's no other information to support anything
11 other than what it is and I think it's important to
12 note that but for the investigative efforts that were
13 made by detectives in this matter, we may not even be
14 at a plea right now.

15 As the Court recalls, this was placed on the
16 firm jury list because even the co-defendant, Mr.
17 Resto, through his own statement attempted to
18 exonerate this defendant's involvement or knowledge
19 of the crime. It was only through the efforts of the
20 Meriden Police Department, particularly Detective
21 Benoit, that we were able to gleam some additional
22 evidence that linked Mr. Breyette to another robbery
23 and therefore negated, perhaps, his state of mind or
24 lack of knowledge about this particular robbery.

25 So it was only through those efforts by Meriden
26 that I think we're even here today and I think that
27 they should be commended for their efforts. I think

1 -- May I just have one moment, please?

2 So in conclusion, your Honor, I understand that
3 the devastating effects of this loss had quite an
4 impact on the family and that manifests itself in
5 different ways and I completely sympathize with
6 Fabio's comments and the comments made by the
7 victim's wife in regards to this matter.

8 It should be noted that that's not the only
9 victim's perspective. I've spoken with the daughters
10 as well, in this matter and there are disparate
11 feelings about how this case should have been handled
12 and I think that bears itself out in the comments
13 that were made today.

14 But, nonetheless, the State is satisfied with
15 the plea bargain and we would ask the Court to impose
16 the agreed upon sentence.

17 THE COURT: Thank you. Counsel.

18 ATTY: Briefly, your Honor. Your Honor, Mr.
19 Breyette is a young man and throughout my
20 representation of him he's always been polite and
21 respectful, but above all else he's been, you know,
22 very remorseful of what he's done and the choices
23 that he's made. He's very sorry for the pain that
24 this family feels and I think that the sentence that
25 -- the agreed upon sentence that the prosecutor and I
26 have discussed is appropriate, in the fact that when
27 Mr. Breyette is released from prison he has those

1 good family ties. He hopefully will learn from his
2 errors and become a better person in the future.

3 He's a hardworking individual. In the PSI it
4 does indicate that he did start his own business in
5 Meriden. He's the father of two young children who
6 he is in contact with constantly, while he's
7 incarcerated. So being a father, he understands the
8 pain that the family feels. He is very sorry for his
9 actions and he does wants to address the Court, your
10 Honor, momentarily.

11 But we would respectfully ask that your Honor
12 accept the agreed upon sentence and with that I'll
13 let Mr. Breyette --

14 THE COURT: Mr. Breyette, something you want to
15 say?

16 THE DEFENDANT: Yes, your Honor. I just want to
17 give my condolences out to the victim's family. You
18 know, during -- the circumstances that happened
19 during this case they're heinous and I can't -- I
20 can't give the family back what they've lost all I
21 can do is just say, I'm sorry, for the choices that
22 another man had made and got them their loss, that's
23 all, your Honor.

24 THE COURT: Anything further?

25 ATTY: Nothing further, your Honor. Thank you.

26 THE COURT: Well, I mean, this is -- I've heard
27 the victim's family now, this is the second

1 sentencing. When I had Mr. Resto's sentencing where
2 I think I imposed a sentence of 53 years in prison on
3 that and it's a very heart wrenching to see the widow
4 and the reaction she can't even make it through these
5 proceedings. The son, the rest of the family, the
6 granddaughter, cute kid up here who's never going to
7 see her grandfather again, you know, my heart and
8 everybody's heart I'm sure here goes out to this poor
9 victim's family for this horrible and tragic,
10 senseless loss.

11 You know, as the PSI -- pre-sentence report
12 indicated, as the prosecutor indicated, this family
13 is devastated financially, physically, emotionally
14 and I think a lot of that we're seeing the effects,
15 with all due respect, to the son. I know he has
16 another view of this particular case. I can just
17 indicate, you know, there is no statute of limitation
18 on the crime of murder. Somebody can be arrested and
19 prosecuted 100 years from now.

20 It's just that the believable evidence through
21 the State and at least from what I've seen is that
22 this was a robbery. Mr. Resto most likely the
23 mastermind and I agree with the State that there was
24 some question of what would happen at a jury trial,
25 especially if Resto came in here to testify for Mr.
26 Breyette.

27 I mean, I don't know, I still think that Mr.

1 Breyette would be convicted, but I think the evidence
2 that was able to be produced after this case went on
3 the jury list, that it looks like this defendant was
4 with Resto on another robbery, I think put an end to
5 that as far as the defense strategy of potentially
6 having a trial. I think Resto is nothing but a cold-
7 blooded killer. He went in there to do a robbery and
8 for some unknown, unforgiving reason he just decided
9 to shoot this innocent person and that's what it is
10 and just what this has done to this poor son and his
11 family, I can just see the anguish and you can feel
12 it, it's extremely sad.

13 And I don't know if Mr. Breyette can appreciate
14 that. He seems like a fairly articulate person,
15 didn't have much of a record. Resto was quite the
16 opposite, did not project well, certainly in a pre-
17 sentence report or at sentencing.

18 But this is an extremely difficult case and all
19 I can say to the son, you know, you're not going to
20 get the satisfaction you want from the judicial
21 system. These are very heavy burdens of proofs that
22 the State have. If this case went to trial, I don't
23 believe any of your theories would be legal evidence
24 to be produced in front of a jury and we don't know
25 -- I don't know how you would get any satisfaction
26 from that at all of reliving that through the course
27 of a trial and with even the uncertainty of what a

1 jury would do.

2 So at this point, certainly, I think this is the
3 legal closure. I can't say you're going to go on
4 with your life, cause I can see your life is ruined
5 forever and I understand -- You know, this defendant
6 is going to be out of prison under 15 years. He's
7 been held since what, 2012, and I certainly have no
8 doubt in my mind that he certainly was aware that
9 Resto was going in there to commit an armed robbery
10 and that's why he's guilty and that's why he's going
11 to jail for the 15 years.

12 So I am not going to reject this agreement
13 that's been reached by the State and the defense. I
14 think it was done in good faith. I think it's done
15 based on their experience. I think it's based on the
16 uncertainty of the results of a jury trial. We
17 certainly here over the last year have had a number
18 of not guilty verdicts on cases that quite frankly
19 looked very strong. It's not a perfect system. I
20 just hope somehow this family is never -- they're
21 never going to be totally whole, but somehow they can
22 remove themselves and move on with their lives. I
23 just hope they can.

24 All right. Mr. Breyette, if you stand up, on
25 the conspiracy to commit robbery in the first degree,
26 I'm going to commit you to the custody of the
27 Commissioner of Corrections for a period of 20 years

1 suspended after you serve 15 years in prison, five
2 years under the Statute is non-suspendable, followed
3 by three years of probation.

4 The violation of probation you were on, I'll
5 revoke that and impose a prison sentence of four
6 years to run concurrently.

7 So the total sentence is 20 years suspended
8 after 15 years in prison, followed by three years of
9 probation, with the five years being mandatory under
10 that section of the robbery statute.

11 I am going to order that you register on the gun
12 registry. Conditions of probation, that you comply
13 with that gun registry. It's a condition of your
14 probation, but you can also be punished up to five
15 years in prison under a separate statute if you don't
16 comply with it.

17 Obviously, no contact with this victim's family,
18 that you not be within 200 yards of that particular
19 store, even though I know they don't own it right
20 now.

21 Any type of substance abuse, counseling and
22 treatment as deemed appropriate, any other counseling
23 as deemed appropriate and that you be employed in
24 some legitimate capacity.

25 I'll find good cause and waive the fees and
26 costs involved.

27 THE DEFENDANT: Thank you, your Honor.

1 THE COURT: Any other counts on this?

2 ATTY. GABARSKY: I think it might have been a
3 sub.

4 THE COURT: Was it a sub?

5 THE CLERK: It was not a sub, your Honor.

6 ATTY. GABARSKY: The State will enter a nolle on
7 the open counts.

8 THE COURT: And I'm asking if the clerk can make
9 those changes where I circled, to change the word
10 defendant to co-defendant so the pre-sentence report
11 is corrected and goes up with the defendant.

12 THE CLERK: Your Honor, may the record reflect
13 I'm serving the defendant with the deadly weapon
14 offender advisement registration requirements.

15 THE COURT: The record may so reflect.

16 THE CLERK: Fees and costs?

17 THE COURT: I waived them already. All right.
18 Recess.

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NO: NNH CR12-0269702T
N23NCR09-02552932
STATE OF CONNECTICUT

: SUPERIOR COURT

: JUDICIAL DISTRICT
OF NEW HAVEN

v.

: AT NEW HAVEN, CONNECTICUT

WILLIE BREYETTE

: JUNE 5, 2015

C E R T I F I C A T I O N

I hereby certify the electronic version is a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Patrick J. Clifford, Judge, on the 5th day of June, 2015.

Dated this 7th day of August, 2015 in New Haven,
Connecticut.

Frances Ortiz
Court Recording Monitor

1 THE COURT: Are we ready on the William Breyette
2 matter?

3 ATTY. BANSLEY: Yes, your Honor.

4 THE COURT: Okay.

5 ATTY. GABARSKY: Can counsel and I approach as
6 he's being brought?

7 THE COURT: Yes.

8 **(A side bar took place.)**

9 THE COURT: All right. This is State versus
10 Willie Breyette.

11 ATTY. BANSLEY: Good morning, your Honor, Walt
12 Bansley for Mr. Breyette who's standing to my left.

13 THE COURT: All right. Now, I don't know
14 whether we do it before the plea or not. There are
15 representatives of the victim's family here, I would
16 assume.

17 ATTY. GABARSKY: Yes.

18 THE COURT: And what is the agreement that has
19 been worked out between the State and the defense?

20 ATTY. GABARSKY: Mr. Breyette is going to enter
21 a plea to conspiracy to commit robbery in the first
22 degree. My understanding is the Court accepted a
23 file transfer on a violation of probation as well
24 from Meriden. The total effective sentence is 20
25 years suspended after 15 years to serve and a three
26 year period of probation.

27 THE COURT: That is the agreement between the

1 State --

2 ATTY. GABARSKY: That's correct.

3 THE COURT: And your client is willing to accept
4 that?

5 ATTY. BANSLEY: That's correct, your Honor.

6 THE COURT: All right. Now, is there
7 representatives of the victim's family that want to
8 be heard now. Obviously, I also know that we're not
9 going to be doing the sentencing now. I would assume
10 it's going to be continued for sentencing cause
11 obviously I'm familiar since I know I have sentenced
12 Frankie Resto, I -- 53 years I believe I sentenced
13 him some time ago.

14 But if they want to be heard before plea, if
15 they're opposing it, I will hear them.

16 ATTY. GABARSKY: That would be my
17 recommendation. My understanding is the decedent's
18 victim's son Fabio Ghazal wishes to address the
19 Court.

20 THE COURT: And what -- Let me ask you this
21 before we do it, the State has reached a plea bargain
22 and does the State want -- I assume the victim's
23 family knows why, but does the State want to indicate
24 what the basis for the plea bargain or what, you know
25 the purpose or why you came up with this particular
26 offer.

27 ATTY. GABARSKY: Sure, your Honor, it should be

1 noted that I believe at the time that the case went
2 on the firm jury list, at the time Mr. Doyle was
3 handling the case -- Mr. Kevin Doyle, I should say --
4 the charge had been a felony murder charge in regard
5 to this incident, due mainly for the fact that Mr.
6 Resto, the individual that the Court was just
7 speaking of that was sentenced to the 53 years, was
8 responsible for killing the decedent. This
9 individual was the driver of that vehicle bringing
10 Mr. Resto to the convenience store.

11 Having said that, there had been some
12 negotiations before the matter went on the jury list
13 for potential plea bargain to conspiracy to commit
14 robbery in the first degree charge. The State feels
15 strongly that the evidence supports that charge and
16 it's the charge that the State feels most likely
17 would prevail upon if and when the case went to trial
18 in front of a jury.

19 The matter was brought back off the firm jury
20 list, first after consultation with the victim's
21 family. I should note that I, myself, as well as the
22 Victim Advocate Beata Bagi met with the victim in a
23 conference room two weeks ago, the victim's family,
24 and had gone over the terms of the plea agreement
25 with a court appointed interpreter for approximately
26 two hours. We addressed many of their concerns. We
27 talked about the potential risks and potential perils

1 of going to trial on these particular charges.

2 At the time, the victim's family I will indicate
3 there were a lot of emotions and I will indicate that
4 they seemed to be split as far as their personal
5 expectations or feelings about the potential outcomes
6 for these -- for this matter.

7 I talked again with them this morning and my
8 understanding is they now are not in favor or in
9 support of the plea bargain agreement and I believe
10 there is someone who wishes to address the Court.

11 THE COURT: But the State is still standing by
12 the agreement that they reached?

13 ATTY. GARBARSKY: Yes, your Honor.

14 THE COURT: All right. So if -- Does anybody --
15 Obviously, they're going to be able to do it at
16 sentencing also, if I go forward with this, but if
17 anybody wants to address me that's fine. Do we need
18 an interpreter? Okay. Thank you.

19 Do they want to pass this? Do they want to wait
20 till like -- Well -- She doesn't have to do it right
21 now. I mean, if she wants me to wait, I'll wait,
22 pass it. Okay. I believe that's the victim's wife.

23 MS. BAGI: Correct.

24 THE COURT: Correct. All right. And sir, your
25 name?

26 MR. GAHZAL: My name is Fabio Ghazal.

27 THE COURT: And you are?

1 MR. GHAZAL: I'm Fabio Ghazal.

2 THE COURT: No, you are to the victim, the
3 relation?

4 MR. GHAZAL: I'm his son.

5 THE COURT: I know. I just wanted -- I knew
6 that but I wanted that for the record. Go ahead,
7 sir.

8 MR. GHAZAL: Thank you, sir. I remember the
9 last time I make my -- Now, I'm going to make it for
10 me and for my family. The last time I -- I tell you
11 I have daughter is five years old, now this is my son
12 he's only now five years old. I'm 45 years old. We
13 know we are in a justice country. Everybody think
14 of justice from the United States. We are victim.
15 We are victim and we lost father.

16 You see the kids, my father dream to see him,
17 but they went there and see him on the ground, cause
18 this killer, this monster, this monster, we lost
19 everything because of him.

20 I don't gonna do anything because he not worth
21 it for I do anything. So be sure just give us the
22 justice and we not agree, we need something just like
23 we -- we need something like, I don't know, but at
24 least for this case, for my daughter, for my mother,
25 just we need justice. Thank you, very much.

26 THE COURT: Thank you, sir. Thank you. The
27 problem obviously, I mean, the victim's family feels

1 very strong, I believe, that they are not receiving
2 justice by this sentence and I know their emotion,
3 because I certainly heard it and felt it when I was
4 sentencing Mr. Resto to 53 years. I'm not sure they
5 were satisfied and nor do I think that any number is
6 going to satisfy a family, an innocent victim and
7 victim's family from a brutal homicide like this is.

8 I've always said in these cases that the numbers
9 that are agreed upon do not reflect the value of this
10 victim to the family and what they're going through.
11 The problems are with justice in the United States is
12 there's just no guarantee, there's no certainty.

13 We've had a number of trials here recently that
14 probably had four or five not guilty verdicts and one
15 was on a murder case. You just don't know what a
16 jury of 12 is going to do and how the evidence is
17 necessarily going to appear to them under our rules
18 of evidence.

19 So that's the reason cases like this end up
20 being negotiated between the State and the defense,
21 is that certainty of punishment, because I think
22 there'd be nothing worse for the victim's family if
23 after a trial it was a not guilty, God forbid, or a
24 hung jury and had to be tried again, that's the
25 problem and the burdens that the State has in
26 attempting to prove someone guilty, that's the
27 realities of it.

1 I know this defendant is alleged to have been
2 the driver of a vehicle that I -- Mr. Resto went in,
3 committed a robbery and killed this poor victim, left
4 this family in misery. I know in previous attempts
5 to see if he was willing to work this out, he was
6 not. His claim was that he did not know that Mr.
7 Resto was going to go in and do that. I know that
8 defies everybody's common sense. I don't disagree
9 with that, but you still don't know what a jury would
10 feel.

11 If the jury would have reasonable doubt that
12 this defendant actually knew and was part of a
13 conspiracy to do a robbery, cause then he would be
14 guilty, obviously, of felony murder, but that's the
15 problems that the State have on these particular
16 cases.

17 So the number certainly doesn't seem like enough
18 for the driver of a getaway car used in a robbery,
19 but I think it's reasonable under the proof problems
20 that the State has. So I think the lawyers have
21 worked it out in good faith and I'm willing to go
22 forward with this agreed recommendation. So, I
23 guess, put the defendant to plea.

24 THE CLERK: He's going forward on the VOP as
25 well?

26 ATTY. GARBARSKY: Yes, sir.

27 THE COURT: Yes.

1 THE CLERK: Willie Breyette, how old are you?

2 THE DEFENDANT: Twenty-seven.

3 THE CLERK: What is your date of birth?

4 THE DEFENDANT: 4/27/87.

5 THE CLERK: What is your address?

6 THE DEFENDANT: My address is 58 ½ Fairview
7 Street, New Britain, Connecticut.

8 THE CLERK: Willie Breyette, in docket number
9 NNH CR12-0269702, you have been charged in an
10 Information in the third count with conspiracy to
11 commit robbery in the first degree, in violation of
12 Section 53a-48 of the Connecticut General Statutes,
13 how do you plead; guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE CLERK: I apologize that should also be with
16 Section number 53a-134 (a), (2).

17 THE COURT: All right. Thank you.

18 THE CLERK: Willie Breyette, in docket number
19 N07M CR09-0255293, you have been charged in an
20 Information in the second count with violation of
21 probation, in violation of Section 53a-32 of the
22 Connecticut General Statutes, do you admit or deny?

23 THE DEFENDANT: Admit.

24 ATTY. GARBARSKY: Factual basis for the pleas
25 your Honor, first with regards to that Meriden file,
26 the defendant was sentenced to a charge of possession
27 of narcotics with intent to sell back on February

1 3rd, 2010 out of the Meriden court, I believe, Judge
2 Scarpellino. He received a sentence of six years
3 suspended after two years and a three year of
4 probation; subsequently, commenced probation January
5 23rd, 2012.

6 The basis for that particular violation, your
7 Honor, is in fact this new case factual basis of
8 which is as follows:

9 On or about June 27th, 2012 again in the City of
10 Meriden, at the location of 271 East Main Street,
11 known as the EZ Mart, police responded at that time
12 to a complaint of a convenience store robbery in
13 which a lone male entered the store demanding money.

14 At the time, the decedent victim Ibrahim Ghazal
15 was present and working behind the counter. The
16 individual approached, displayed a gun and asked for
17 the money behind the counter. The victim at that
18 time gave the money to the robber, in which turned
19 the defendant -- the co-defendant, I should say, Mr.
20 Resto the robber at the time, shot him with a firearm
21 and he was later pronounced dead. This entire
22 incident was recorded on video surveillance at the
23 store.

24 Shortly thereafter, after distributing the video
25 surveillance to the police, the Meriden Police
26 Department were given information that the shooter
27 was known as a Frankie Resto and they also received

1 information implicating this defendant, Willie
2 Breyette, as the potential driver and a potential
3 vehicle.

4 Police responded to Mr. Breyette's home and
5 located the vehicle that matched the description of
6 the surveillance vehicle and they impounded that
7 vehicle at that time to conduct a search.

8 And they also interviewed Mr. Breyette about his
9 involvement. Mr. Breyette indicated at the time he
10 was the driver of the vehicle and that had driven Mr.
11 Resto to that store. He also led police to a shirt
12 that Mr. Resto had discarded during the robbery.

13 Several days after this incident, Mr. Resto was
14 found in New York, was arrested for this crime and
15 then confessed to the robbery as well as the murder;
16 however, at the time he claimed that the gun went off
17 accidentally. He also maintained, at the time of the
18 arrest, as well as subsequently, that this defendant,
19 Mr. Breyette, had no knowledge of the fact that he
20 was going in to rob the store.

21 THE COURT: Who said that, Resto, in his
22 statement?

23 ATTY. GARBARSKY: That's correct. The -- And I
24 believe he also said that at the arraignment at the
25 time that he had brought into the Meriden court for
26 these charges.

27 My understanding and based on the agreement,

1 your Honor, the -- the agreement is 20 years
2 suspended after 15 to serve and a three year period
3 of probation, that is to encompass these two files
4 and as an agreement as well, there was an underlying
5 robbery that Mr. Resto was also involved in with Mr.
6 Breyette several years before and the State will
7 represent that those charges, based on this
8 agreement, will not be pursued.

9 THE COURT: So, Mr. Resto when he got arrested
10 and the arraignment indicated that Mr. Breyette did
11 not know that there was going to be a robbery?

12 ATTY. GARBARSKY: At the time of the
13 arraignment, Mr. Resto had made a statement, for lack
14 of a better term, that Mr. Breyette had nothing to do
15 with this, I believe those were his words.

16 THE COURT: Was the defense going to call Mr.
17 Resto if it was a trial?

18 ATTY. BANSLEY: Yes, your Honor.

19 THE COURT: I don't know what credibility it
20 would have, you still would have called him.

21 ATTY. BANSLEY: That's correct, your Honor.

22 THE COURT: All right. Mr. Breyette, let me ask
23 you some questions, sir. Right now are you under the
24 influence of any alcohol, drugs or medication?

25 THE DEFENDANT: No, your Honor

26 THE COURT: Have you had enough time to discuss
27 what you're doing here today with your attorney?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And are you satisfied with his legal
3 advice?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And are you entering this, the
6 pleas, voluntarily and of your own free will?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Anybody forced you or threatened you
9 to cause you to enter these pleas?

10 THE DEFENDANT: No, your Honor

11 THE COURT: Are you on any other kind of
12 probation or parole, besides the probation you
13 admitted to?

14 THE DEFENDANT: No, your Honor

15 THE COURT: By pleading guilty, you're giving up
16 your right to continue to plead not guilty and to
17 require that the State prove your guilt beyond a
18 reasonable doubt at a trial, before a judge or a jury
19 while you're represented by your lawyer.

20 When you admit a violation of probation, you
21 give up your right to have a hearing before a judge
22 with your lawyer representing you, requiring that the
23 State prove by a preponderance of the evidence that
24 you violated your probation.

25 On both of these, you're giving up your right to
26 confront and to cross examine witnesses, the right to
27 present any kind of defenses that you might have had

1 and also the right not to be a witness against
2 yourself.

3 Do you understand you're giving up those various
4 rights here today?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Violation of probation, the State
7 would have to prove you're on probation, you violated
8 the terms of it and you could have gotten up to four
9 years on that. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you agree you violated your
12 probation?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: On the conspiracy to commit robbery,
15 the robbery section the State -- a person commits
16 robbery when in the course of committing a larceny
17 they use or threaten the immediate use of physical
18 force upon another person for the purpose of
19 compelling the owner of the property to turn the
20 property owner.

21 What makes is a robbery in the first degree, is
22 that a person commits a robbery and in the course of
23 the commission of the robbery or immediate flight
24 therefrom, they or another participant is armed with
25 a deadly weapon.

26 Here you pled guilty as a conspirator which
27 means with the intent to commit that crime, you

1 agreed with another person to engage in the crime of
2 robbery and one of you committed an overt act in
3 pursuance of that conspiracy and that's punishable by
4 up to 20 years in prison, five years is non-
5 suspendable or mandatory time. Do you understand
6 that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: So your exposure here was 24 years
9 in prison with a five year minimum mandatory. Do you
10 understand that, sir?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Now, you admitted the violation of
13 probation. Was it a straight guilty plea on the
14 robbery?

15 ATTY. BANSLEY: Yes, your Honor.

16 THE COURT: You heard what the State indicated
17 they were prepared to prove on the conspiracy to
18 commit robbery in the first degree and you pled
19 guilty, so my question is do you agree essentially
20 with those facts as summarized by the State?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. The agreement is, as
23 just indicated, that the total effective sentence
24 would be 20 years suspended after 15 years in prison,
25 five years is non-suspendable or mandatory, followed
26 by three years of probation, with conditions on the
27 probation.

1 Is that your understanding of the agreement and
2 the basis upon which you're entering your pleas
3 today?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Any other promises been made to you?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Once I --

8 ATTY. BANSLEY: Your Honor, I'm sorry, just with
9 what the State reflected before.

10 THE COURT: Yeah. Thank you. That's on the
11 record.

12 Once I accept these pleas you can't change your
13 mind later on, unless there's some valid legal
14 reason. Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: You're going to be required to
17 submit to the taking of blood or other biological
18 sample for DNA analysis. Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: If you're not a citizen of the
21 United States, conviction can have the consequences
22 of deportation, exclusion from admission into the
23 United States or denial of naturalization. Do you
24 understand that?

25 THE DEFENDANT: Yes, your Honor.

26 THE COURT: Also because of the nature of the
27 robbery, you're also going to be required to register

1 on the gun registry, that's going to be a condition
2 of your probation, but also if you don't comply with
3 the gun registry you could be separately prosecuted
4 and up to five years you could go to jail or prison,
5 for not complying with that. Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: All right. Have you understood the
8 questions that I've asked you?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Is there anything you want to ask me
11 or anything you want to ask your lawyer, before I
12 accept your plea?

13 ATTY. BANSLEY: Your Honor, my client is just
14 indicating about pre-trial confinement credit, which
15 I'm sure your Honor will get to at sentencing.

16 THE COURT: Yes. He's obviously going to get
17 credit for the time he was. He certainly is legally
18 entitled to that.

19 Anything you want to ask me or anything you want
20 to ask your lawyer?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Either lawyer know any reason why
23 the plea should not be accepted or recommend that the
24 Court place anything else onto the record, at this
25 time?

26 ATTY. GABARSKY: No, your Honor.

27 ATTY. BANSLEY: No, your Honor.

1 THE COURT: Pleas are found to be voluntary and
2 understandably made with the assistance of competent
3 counsel, there's a basis for them, I will accept them
4 findings of guilty and a finding that he violated his
5 probation is made. A pre-sentence report will be
6 ordered. I was just going to pick a date, Thursday
7 June 4th, maybe we can check with the victim's family
8 to make sure that's okay.

9 ATTY. GABARSKY: Is that a Thursday?

10 THE COURT: Yeah, is that bad?

11 ATTY. GABARSKY: That's not a good day for Mr.
12 Doyle or myself. It could either be the 5th or
13 perhaps the following week may be better.

14 THE COURT: How about Tuesday, June 9th? Is
15 that okay with the victim's family; do we know? If
16 there's a problem with the date as we get close, we
17 can change it.

18 ATTY. GABARSKY: They're nodding in approval.

19 THE COURT: All right. I'm going to put it
20 down, obviously if there's an issue with that -- Is
21 that all right with the defense?

22 ATTY. BANSLEY: Yes, your Honor. Thank you.

23 THE COURT: All right. Sentencing will be on
24 June 9th. Thank you.
25
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27

NO: NNH CR12-0269702T
N23NCR09-02552932
STATE OF CONNECTICUT

: SUPERIOR COURT

: JUDICIAL DISTRICT
OF NEW HAVEN

v.

: AT NEW HAVEN, CONNECTICUT

WILLIE BREYETTE

: MARCH 25, 2015

C E R T I F I C A T I O N

I hereby certify the electronic version is a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Patrick J. Clifford, Judge, on the 25th day of March, 2015.

Dated this 12th day of June, 2015 in New Haven,
Connecticut.

Frances Ortiz
Court Recording Monitor

Exhibit F

DOCKET NO. H12M-CR130245927S : SUPERIOR COURT
STATE OF CONNECTICUT : G.A. # 12
v. : AT MANCHESTER, CT
ANTHONY JOHNSON : FEBRUARY 13, 2015

BEFORE THE HONORABLE CESAR NOBLE, JUDGE

A P P E A R A N C E S:

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Recorded By:

Stephanie Botticello
Court Recording Monitor

Transcribed By:

Lisa M. Corrado
Court Recording Monitor
Manchester Superior Court
410 Center Street
Manchester, CT 06040

1 ATTY. BROOKMAN: The matter of Anthony Johnson,
2 your Honor.

3 THE COURT: Mr. Kaatz, good morning, sir.

4 ATTY. KAATZ: Good morning, your Honor.

5 Attorney Leon Kaatz for the defendant, Anthony
6 Johnson coming in from lockup.

7 THE COURT: And Attorney Brookman, good morning.

8 ATTY. BROOKMAN: Good morning, your Honor.

9 (WHEREUPON, THE DEFENDANT WAS ESCORTED TO
10 COUNSEL TABLE.)

11 ATTY. KAATZ: This is Mr. Johnson, your Honor.

12 THE COURT: Mr. Johnson, good morning, sir.

13 Before we begin, I'm going to inquire of counsel --
14 Mr. Kaatz, did you have an opportunity to review and
15 familiarize yourself with the PSI?

16 ATTY. KAATZ: I have, your Honor.

17 THE COURT: Were you provided with a copy of the
18 PSI at least 48 hours before today's date?

19 ATTY. KAATZ: I was, your Honor.

20 THE COURT: And have you reviewed the PSI with
21 Mr. Johnson?

22 ATTY. KAATZ: I did, your Honor.

23 THE COURT: Mr. Johnson, is that true you had
24 an opportunity to review the pre-sentence investi-
25 gation with Mr. Kaatz?

26 THE DEFENDANT: Yes.

27 THE COURT: Counsel, are there any inaccuracies

1 in the pre-sentence investigation of which you are
2 aware or which your client believes exists that you'd
3 like to bring to my attention?

4 ATTY. KAATZ: As written, your Honor, there are
5 no substantive changes that need to be made or
6 brought to the Court's attention.

7 THE COURT: Very good. And let me make inquiry.
8 I note from the PSI that CVS and the two individuals,
9 Mr. Tran and Mr. Orellana have been reached out to.
10 Does the State know whether they wish to be heard?

11 ATTY. BROOKMAN: Yes, your Honor. I can
12 indicate that the investigator in our office, Mr.
13 Duarte, as well as the Victim Advocate, Ms. Zavickas,
14 have attempted to make contact. My understanding is
15 that CVS does not wish to provide this Court with
16 any input as to potential sentencing. That Mr. Thang
17 Tran did not have anything to add. And my under-
18 standing is we have been unable to reach Mr.
19 Orellana.

20 THE COURT: Ms. Zavickas, is that your under-
21 standing as well?

22 MS. ZAVICKAS: Yes, sir, it is.

23 THE COURT: And just identify yourself for the
24 record please?

25 MS. ZAVICKAS: Melissa Zavickas, Office of
26 Victim Services. And I did make verbal contact with
27 the manager and staff. And Attorney Brookman

1 articulated just that.

2 THE COURT: Thank you very much.

3 MS. ZAVICKAS: Thank you.

4 THE COURT: With that, Attorney Brookman.

5 ATTY. BROOKMAN: Yes, your Honor. As this
6 Court is aware of the facts of this matter having
7 presided over the trial, I will not belabor
8 the facts for the underlying convictions.

9 Mr. Johnson stands here before this Court
10 convicted of robbery in the 2nd degree, as well as
11 conspiracy to commit robbery in the 2nd degree. That
12 review of the pre-sentence investigation report is
13 very revealing, in that this defendant is not a
14 stranger to the criminal justice system. That this
15 defendant has a significant criminal history, both in
16 the State of Connecticut; within the federal govern-
17 ment, as well as the State of Massachusetts.

18 That this defendant has on various occasions
19 been involved with violations -- convictions for
20 narcotics, prior convictions for robbery in the 3rd
21 degree, and as well as other crimes of violence
22 including assault in the 3rd degree and breach of
23 peace.

24 That during the pendency of this case he's been
25 arrested both in Boston, Massachusetts for, again,
26 what appears to be narcotic allegations, as well as
27 in the State of Connecticut. He has a pending case

1 in the Rockville Superior Court for possession of
2 narcotics, threatening, disorderly conduct and drug
3 paraphernalia.

4 That from the pre-sentence investigation report
5 it also appears that Mr. Johnson has admittedly, on
6 page 11, been very forthcoming in that when he is not
7 locked up, when he is within the community, that he
8 supports himself by the sale of narcotics.

9 I would indicate to this Court that Mr. Johnson
10 poses a significant concern in terms of safety to
11 the community. And that in fashioning an appropriate
12 sentence this Court should consider Mr. Johnson's
13 prior criminal history in fashioning an appropriate
14 sentence. That he poses a significant safety risk to
15 the community. That he has violations of probation.
16 He's alleged here to be committing offenses while out
17 on release, pendency of this particular case. That
18 the Court should, in this matter, impose the maximum
19 penalty under the law.

20 And for those reasons, your Honor, would submit
21 that this Court, in fact, do so and impose the
22 maximum penalty for the robbery in the 2nd degree and
23 the conspiracy to commit robbery in the 2nd degree.

24 THE COURT: So the State is looking for ten
25 years?

26 ATTY. BROOKMAN: I'm sorry?

27 THE COURT: The State is asking for ten years?

1 ATTY. BROOKMAN: It's ten years for the robbery
2 and --

3 THE COURT: And ten years for the conspiracy.

4 ATTY. BROOKMAN: -- and ten years for the
5 conspiracy.

6 THE COURT: So the State is asking for that to
7 run consecutive?

8 ATTY. BROOKMAN: Consecutive.

9 THE COURT: Okay. Mr. Kaatz.

10 ATTY. KAATZ: Thank you, your Honor. Your
11 Honor, one of the hardest things for a defense
12 counsel to do is to make a sentencing argument when
13 your client's been convicted after trial. I know the
14 Courts always like to have your clients -- have the
15 defendant show remorse, but for him to show remorse
16 at this time would undermine whatever credibility he
17 has left having claimed that he was not the
18 perpetrator of the crime at the time of trial.

19 And I would note in that regard, your Honor,
20 that the two victims who the State tried to contact
21 -- the Court will remember both of them testified
22 affirmatively and emphatically at trial that Mr.
23 Johnson was not the person who they saw robbing the
24 store at the time. So it's not surprising that they
25 would not have a position with regard to any
26 opposed -- a proper sentence for Mr. Johnson because
27 they don't -- they did not believe that he was the

1 one who committed the crime that's before the Court.

2 So, your Honor, not being able to show remorse
3 for Mr. Johnson, which I don't think it would be
4 appropriate for us to do it at this time. I'm in
5 this awkward position. I'm not going to parade him
6 before the Court with a gerah of ashes and
7 sackcloth and ask the Court to give sympathy for him
8 in that regard, your Honor.

9 With that being said, his statement that he
10 gave in the PSI is very revealing. He notes that
11 he is at peace with the decision. And he notes that
12 in the language of the streets he's been a bad dude.
13 He certainly hasn't been a choir boy. And he's
14 readily admitted to that. And in his PSI statement
15 he states, that is, things he's done in the past that
16 he probably should have been punished for that he
17 hasn't. So we can say this -- the peace that he has
18 with this situation right now is under the category
19 of what goes around comes around and now it's coming
20 around for him, your Honor.

21 That being said, he continues to maintain his
22 claim of innocence in the matter and there is
23 certainly substantial evidence offered at trial to
24 show that that was the case. But where does that get
25 us? He's still here today and we still have to
26 fashion a sentence and the punishment for him because
27 the Court has found him guilty.

1 One of the things that I think is very important
2 and I hope the Court does too. Whenever you have
3 people who are convicted of like crimes, with like
4 circumstances, they should receive like punishments.
5 The co-defendant in this matter, Sedwick Daniels has
6 a plea agreement in place which will limit his
7 sentence to four and a half years. I think by any
8 fair reading of the history of Mr. Daniels, which was
9 readily admitted to when he testified in court and
10 the history of Mr. Johnson, both of them have
11 approximately the same criminal histories, your
12 Honor. There was absolutely nothing that was offered
13 in Court -- looking at the evidence in the light most
14 favorable to the State -- there's nothing that was
15 offered in court by way of evidence to suggest that
16 Mr. Johnson's culpability in this matter was any more
17 substantial than Mr. Daniels was. And, in fact, Mr.
18 Daniels disavowed that there was even a conspiracy
19 in place, notwithstanding the fact that that's the
20 charge that he's admitted to. That what happened
21 inside with regard to the robbery was not by
22 agreement, but just happened while he was in there.

23 Your Honor -- but, again, under the idea of like
24 sentences, like circumstances to serve like
25 sentences, if one buys into that argument and I hope
26 the Court will, that Mr. Daniels' sentence of four
27 and a half years -- his plea agreement for four and a

1 half years -- I understand he's not been sentenced
2 yet -- should represent a CAP on what the Court
3 should be considering for Mr. Johnson.

4 Now I know I'm going to hear all the cries, but
5 Mr. Daniels pled out. Mr. Daniels testified. Mr.
6 Johnson put the State to the burden of going to a
7 trial. All absolutely true. Putting the State to
8 the burden of going to a trial is a constitutionally
9 guaranteed right of Mr. Jackson (sic), guaranteed to
10 him by the United States Constitution as well as the
11 Connecticut Constitution. And whereas Mr. Daniels
12 chose not to exercise that right, Mr. Johnson did.

13 Mr. Daniels, one can say, voluntarily pled
14 guilty although one questions how voluntary that is
15 given the strength of the case against him. He had
16 admitted to committing these crimes and even that
17 voluntary plea took seventeen months before it
18 blossomed while he was incarcerated. And it didn't
19 blossom until after he had gotten a favorable plea
20 offer from the State to testify against Mr. Johnson.

21 THE COURT: Mr. Kaatz, I'm sorry to interrupt.
22 Could you refresh my recollection? Was there an
23 inculpatory statement given by Mr. Daniels within
24 months of the offense?

25 ATTY. KAATZ: The night he was arrested
26 according to the police reports. And the testimony
27 of the police officers the night he was arrested

1 he admitted participating in the crime.

2 THE COURT: Thank you.

3 ATTY. KAATZ: Plus he testified to that at
4 trial, your Honor. But that was -- he had
5 established himself as a person there and actually
6 was arrested, your Honor.

7 Getting back to what I was saying, your Honor.
8 We have a situation now where Mr. Johnson has
9 exercised his constitutional right to a trial. Mr.
10 Daniels chose not to. And by exercising that
11 constitutionally protective right, the State's
12 looking to, essentially, slam Mr. Johnson. They
13 want him to get the maximum. Whereas Mr. Daniels
14 gets off with no more than four and a half years.
15 That isn't right, your Honor. Like crimes with
16 people in like situations deserve like sentences.

17 And the fact that Mr. Johnson exercised his
18 constitutional right to a trial should not be held
19 against him. That clearly has a chilling affect
20 on anybody in the future who chooses to go to trial,
21 but they know that if they lose they're going to get
22 a much worse situation. Rights are guaranteed by the
23 constitution. It shouldn't come with those ominous
24 overtones if they are exercised, your Honor. And
25 what the State is choosing to do here is to put those
26 overtones into play against Mr. Johnson, your Honor.

27 I think that whatever in a vacuum one may see as

1 the appropriate sentence for these actions you cannot
2 look at it in a vacuum. You cannot look at it
3 without looking at what the co-defendant is getting,
4 without appreciating the fact that the co-defendant's
5 participation was the same as -- is greater than Mr.
6 Johnson's and the record of the co-defendant is the
7 same as or greater than Mr. Johnson's. Mr. Johnson
8 does not work -- in any worse shape than the co-
9 defendant is getting in this matter. Your Honor,
10 recalls the evidence -- and actually the plea
11 agreement which was made as part of the evidence in
12 this case limits the co-defendant's sentence to four
13 and a half years.

14 And I'm asking the Court to impose a sentence of
15 no greater than four and a half years for Mr.
16 Johnson. Thank you for your time, your Honor.

17 THE COURT: Thank you. Mr. Johnson, is there
18 anything you'd like to say, sir?

19 THE DEFENDANT: Like my attorney just said. The
20 remorse is going to be hard for me. I see no victim
21 ever came to this Court and said I did anything to
22 them. What puzzles me even more, is the State's
23 Attorney never asked any victim did I do anything
24 to them intro, but now she's asking for the max of
25 time. I'm really puzzled with that, you know. We
26 went to trial. The victim said it wasn't me. Not
27 only did they say it wasn't me. The State's Attorney

1 never even asked the victim intro, was it him? I
2 mean, now she's asking for the maximum time. I don't
3 know, I mean, what's really going on.

4 THE COURT: Anything further, sir?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right.

7 ATTY. BROOKMAN: If I may, your Honor?

8 THE COURT: You may.

9 ATTY. BROOKMAN: First, the State would like to
10 indicate that Mr. Daniels, in this matter, when he
11 was arrested implicated Mr. Johnson as the co-
12 conspirator in this matter well before any plea
13 agreement was entertained by the State.

14 Secondly, Attorney Kaatz mischaracterizes the
15 testimony of those witnesses. Mr. Tran and Mr.
16 Orellana were not ever asked whether they could
17 identify Mr. Johnson. Rather, the question asked
18 was whether at the time of trial Mr. Johnson appeared
19 to be in his 20's or 30's. So counsel's assertion
20 that the witnesses did not identify Mr. Johnson is,
21 again, mischaracterization of the testimony of those
22 witnesses. And that evidence came in over the
23 State's objection because Mr. Johnson's appearance
24 during the course of this trial was not relevant to
25 how he appeared at the time of the offense.

26 Secondly, the State takes exception to Attorney
27 Kaatz' argument that the State, here, is asking for

1 this Court to penalize Mr. Johnson for exercising his
2 right to a trial. The State is asking for imposition
3 of sentence here that is appropriate given his
4 criminal history that dates back, as this Court can
5 see, to 1977 for very significant crimes and
6 continues to engage in the same enterprise of
7 narcotics and robbery. And that this defendant poses
8 a significant risk to the safety of the public and
9 that is an appropriate factor for the Court to
10 consider in fashioning an appropriate sentence.

11 For those reasons ask that this Court, in fact,
12 impose the maximum penalty. Thank you.

13 THE COURT: Anything further, Mr. Kaatz?

14 ATTY. KAATZ: Briefly, your Honor. I take
15 exception to the State's taking exception to my
16 remarks about the testimony at trial. The two
17 witnesses emphatically testified that the person who
18 committed the crime was in their 20's. They were
19 unshakable in that testimony. Mr. Johnson was then
20 paraded before the Court -- before them and asked
21 if this man looked at all like he was in his 20's and
22 they emphatically said no. I think we're splitting
23 hairs here. They clearly did not identify him, nor
24 were they ever asked to identify him as a person who
25 committed the crime, your Honor.

26 And as far as the claim of the -- of
27 guaranteeing his constitutional rights and not

1 getting the better sentence -- I'm not saying and I
2 said in my initial remarks -- taken in a vacuum four
3 and a half years might be a generous sentence for Mr.
4 Johnson, but we're not dealing in a vacuum here.
5 And we have to consider like circumstance, like
6 defendants in the same case and the co-defendant is
7 having a CAP of four and a half years. And that's
8 why -- where the Court should start from in
9 considering Mr. Johnson's sentence. Thank you, your
10 Honor.

11 THE COURT: Thank you. Attorney Brookman?

12 ATTY. BROOKMAN: Nothing further, your Honor.
13 Thank you.

14 THE COURT: I'm going to first state for the
15 record that I reviewed Mr. Johnson's pre-sentence
16 investigation report in length. I thank its author,
17 as well as both counsel for their arguments
18 advocating on behalf of their clients. I think you
19 both did a very good job.

20 Mr. Johnson stands before me convicted of the
21 offenses of robbery in the 2nd degree and conspiracy
22 to commit robbery in the 2nd degree. I am obliged to
23 refer to defendant's last sentence in his written
24 statement for the PSI, that was also argued again
25 by both counsel. And I quote from the PSI, "the
26 acts of which I was accused were no more or no less
27 onerous than the acts admitted to by the

1 co-defendant, Mr. Daniels. In considering parity
2 and sentencing, I sincerely hope that the Court will
3 not punish me more severely just because I exercised
4 my right to trial notwithstanding my claim of
5 innocence." I am going to first note that this
6 defendant, Mr. Johnson, enjoys an unfettered
7 constitutional right to a trial by jury. This right
8 is one of the hallmarks, if not the crown of our
9 American legal jurisprudence and its enshrined,
10 Sixth Amendment to the United States Constitution,
11 14th Amendment to our states, including Article 1st,
12 Section 19 of the State -- constitution of the State
13 of Connecticut.

14 No sentence should, and this one does not
15 penalize a defendant for the exercise of that
16 valuable right. I do not have before me Mr. Daniels.
17 All I have before me are the particulars of the
18 offense that Mr. Johnson has been convicted of by a
19 jury of his peers, the nature of the offense, the PSI
20 report providing me with information regarding Mr.
21 Johnson's individual history. And I am guided by the
22 purposes of sentencing including rehabilitation,
23 retribution or punishment, deterrence, both general
24 and specific, and the protection of society as
25 applied to the offenses of which Mr. Johnson stands
26 convicted.

27 This Court first takes notice of the offense and

1 its nature. While there was no evidence of any
2 actual dangerous weapon or deadly instrument having
3 been used in this crime, there certainly was evidence
4 that one was threatened and that the crime was
5 committed by explicit efforts to intimidate the
6 victims, Mr. Orellana and Mr. Tran who are employees
7 of CVS. And that efforts were made to convict them
8 through use of force. It is apparent to me that the
9 efforts to intimidate these victims was successful.
10 I'm aware that the assistant manager reported that
11 the victim, Mr. Orellana, the CVS employee who was
12 working behind the cash register, he no longer works
13 at the store and he was "freaked" after the incident.
14 I can well imagine that both, Mr. Orellana and Mr.
15 Tran had the occasion to fear for their personal
16 safety as a consequence of this robbery. The record,
17 as demonstrated by the surveillance photographs,
18 leaves very little room for doubt that this here was
19 intended by Mr. Johnson in order to accomplish his
20 goal of the robbery and he succeeded.

21 As to his personal history, the defendant had
22 approximately -- has approximately twenty-four prior
23 convictions and one violation of probation dating
24 back to 1977, which continued through -- and I take
25 this into significant consideration -- not only the
26 date of this offense but beyond.

27 The PSI reflects that the defendant has been

1 arrested for possession of narcotics and threatening
2 in the 2nd degree among other offenses. On September
3 9th, 2014, I take judicial notice that the defendant
4 was released on \$250,000 dollars bail pending the
5 trial of this matter. I also note the PSI interview
6 of Mr. Johnson which indicated that he had no legal
7 means of support or income during this period other
8 than the sale of narcotics.

9 This Court is further obliged to note the arrest
10 in Boston and Rockville. So two separate arrests for
11 narcotics after Mr. Johnson's release on bail in this
12 matter on a significant amount of bail.

13 Mr. Johnson's criminal record reflects that this
14 was not and is not, sir, your first arrest for
15 robbery or your first conviction for robbery. This
16 is your third.

17 Mr. Johnson's criminal record reflects numerous
18 convictions for narcotics consistent with his
19 comments to the author of the PSI, which is
20 attributed to Mr. Johnson as follows: "To be honest,
21 this is how I support myself, through drugs." When
22 asked, when was the last time he sold drugs. He
23 stated, "every time I am out there, meaning in the
24 community".

25 A review of Mr. Johnson's life indicates that
26 since about the age of 18, his life has been
27 characterized by incarceration, punctuated by

1 comparatively brief periods of liberty in the
2 community during which he has done nothing but commit
3 offenses. By his own words in the PSI, his time in
4 the community has been characterized by returning to
5 addiction for heroin. And that's on page 10. And
6 by the sale of drugs to support himself.

7 I also note with respect to the issue of
8 remorse, Mr. Kaatz, and I understand your arguments.
9 And, Mr. Johnson, I understand your arguments that
10 you didn't do it in spite of the conviction.

11 I also note that Mr. Johnson has stated that
12 the system is racist. He's locked up for -- he's
13 been "locked up for a lot of things I haven't done".
14 That to me, Mr. Kaatz, sort of undermines the
15 argument while he's admitted that he's done
16 things for which he has not been arrested.

17 In crafting my sentence, I do not find that
18 there are any rehabilitative purposes that would
19 be served by any period of probation. I also don't
20 find that there is any purpose of specific
21 deterrence to Mr. Johnson that would be served by
22 this sentence.

23 I note his age of 55 years of age. It is my
24 hope that a comparative, significant sentence will
25 serve the purpose of general deterrence for
26 individuals of Mr. Johnson's age and history. I am
27 left really with the main goals of sentencing as the

1 protection of the public because I find that if
2 released he will continue to commit the narcotic
3 offenses, will continue to feel free to use acts of
4 intimidation and force and threatening individuals.

5 So my sentence is based significantly on the
6 purpose of protection of the public, as well as
7 quite frankly the bald purpose of punishment.

8 It is, therefore, the order of the Court that
9 the defendant, Mr. Anthony Johnson, is sentenced on
10 the charge of robbery in the 2nd degree to the
11 custody of the Commissioner of Corrections for a
12 period of eight years. And on completion of his
13 sentence of incarceration is transferred to the
14 jurisdiction of the Board of Parole for a period of
15 two years of special parole pursuant to General
16 Statute Section 54-125e.

17 On the charge of conspiracy to commit robbery
18 in the 2nd degree he is similarly sentenced to the
19 custody of the Commissioner of Corrections for a
20 period of eight years. And on completion of his
21 sentence of incarceration is transferred to the
22 jurisdiction of the Board of Parole for a period of
23 two years of special parole pursuant to General
24 Statute Section 54-125e. They are to run concurrent
25 for a total effective sentence of eight years to
26 serve with two years of special parole.

27 Given Mr. Johnson's status as an incarcerated

1 person, the Court finds good cause for waiver of
2 fees and costs. Anything further, Madam Clerk?

3 THE CLERK: That's it, your Honor, other than
4 the Notice of Right to Appeal and the sentence
5 review.

6 THE COURT: They may be passed to the defendant.

7 ATTY. BROOKMAN: If I may, your Honor, the State
8 will be requesting a transcript for parole purposes.

9 THE COURT: Transcript is ordered.

10 ATTY. BROOKMAN: As well, your Honor, the State
11 would ask permission with respect to the Court's
12 ruling as to the larceny in the 4, the State would
13 ask permission to appeal that issue, your Honor.

14 THE COURT: The State has permission to appeal.

15 ATTY. BROOKMAN: Thank you.

16 THE COURT: And with that, I think we've
17 resolved this matter. We are now passed our morning
18 recess time. So the Court will stand in recess for
19 its morning break.

20 ATTY. KAATZ: Thank you, your Honor.

21 (WHEREUPON, THIS MATTER CONCLUDED.)
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23
24
25
26
27

DOCKET NO. H12M-CR130245927S : SUPERIOR COURT
STATE OF CONNECTICUT : G.A. # 12
v. : AT MANCHESTER, CT
ANTHONY JOHNSON : FEBRUARY 13, 2015

C E R T I F I C A T I O N

I hereby certify that the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Manchester Superior Court, G.A. 12, Manchester, Connecticut, before the Honorable Cesar Noble, Judge, on the 3rd day of February 2015.

Dated this day of 30th day of April 2015 in, Manchester, Connecticut.

Lisa M. Corrado
Court Recording Monitor

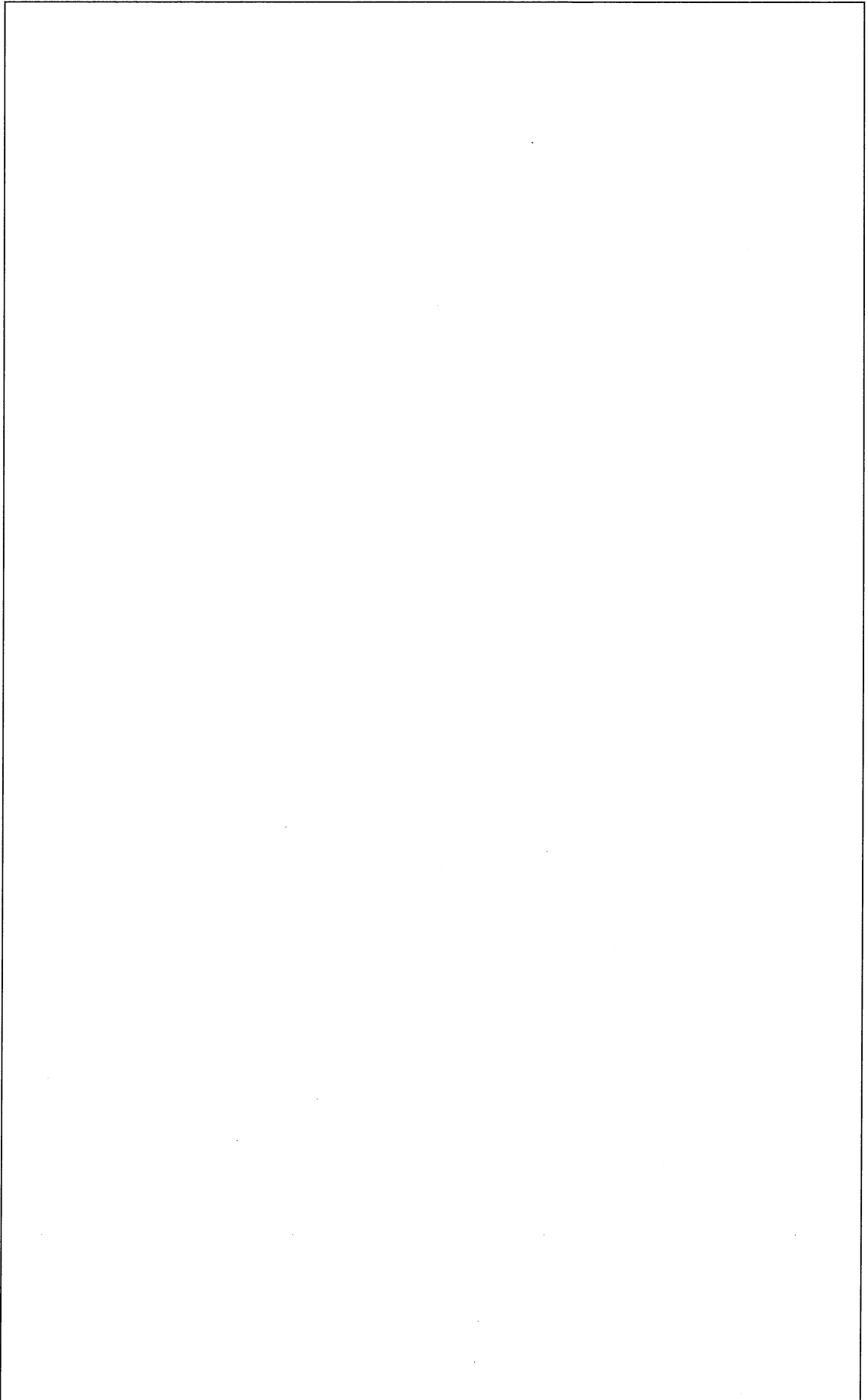
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Lisa M. Corrado
Court Recording Monitor



CERTIFICATION

I hereby certify that on April 7, 2020, a copy of the foregoing was filed electronically on the judicial branch website and emailed to the following:

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